[PARALLEL CODE]

THE INDIAN INCOME-TAX ACT

[ACT XI OF 1922]

AS AMENDED BY

THE INDIAN INCOME-TAX (AMENDMENT) ACT
[ACT VII OF 1939]

BY

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PREFACE.

The utility of a parallel code is so well recognised that no apology is needed for bringing out one, at this transition stage, in regard to the Indian Income-tax Act. The recent Amendment Act occupies considerable space even in bulk and in its scope and effect may be considered to mark a definite epoch in the history of fiscal legislation in this country. It is unique in this that it is the result largely of co-operation and compromise between the Government and the leading parties of the opposition.

The purpose of the new Legislation is to bring in more revenue by enlarging the scope and area of taxation and by putting effective stop to fraudulent evasion and legal avoidance. The Legislation is intended to secure an equitable and more effective administration of the Act.

Our aim is to focus attention on the sections themselves and we have given in the notes extracts from the Objects and Reasons accompanying the Bill and the Select Committee Report as well as extracts from the speeches in the Assembly and the Council of State which elucidate clearly the scope and intention of the changes. This will, we hope, help towards a clearer understanding of the sections themselves.

Mr. M. Subbaraya Aiyar has kindly written an Introduction. We take this opportunity of expressing our gratitude to him.

The Amendment Act consists of two parts. Part I takes effect from 1—4—1939 and is incorporated in the Act itself. Part II brings into existence the Appellate Tribunal and will take effect at a date not later than two years from 1—4—1939. Part II is printed separately at the end of the Act, as Appendix A, and also at the foot of each section to which it relates.

The Act is printed in parallel columns the Old Act on the left-half and the Act as amended on the right-half, the amendments and the additions being printed in italics. Asterisks denote omissions. The unamended portions are printed throughout the page.

We have added by way of Appendix, the Finance Act and the rates in force for income-tax and super-tax for 1938-39 and the Finance Act and rates for 1939-40 and other useful Acts and Orders. The new Rules containing the new return forms and rules governing registration of firms etc., will also be found in the Appendices.

These we believe will be very helpful An index has also been added which it is hoped will be of considerable assistance

Our thanks are due to the Madras Law Journal Press for their quick and neat execution

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29—3—1939.

T V Viswanatha Aiyar
S Krishnamurthi

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INTRODUCTION

The need for the publication of a parallel Code of the Income-tax Act containing the old and new sections side by side requires little explanation

The changes made in the law by the provisions of the Amending Act are varied and some of them very startling Onerous statutory obligations are laid on the assessees even in submitting the returns which have to be sent hereafter without being called upon to do so A perusal of the Statutory Form of Return at the end of the book will make it clear how necessary it is for every tax-payer to know the essential requirements regarding the details he has to furnish The changes proposed by the Income-tax Enquiry Committee Report and the clauses in the Bill originally introduced were so complex that the public mind was considerably agitated over the legislation For the purpose of an accurate understanding of the New Act and the implications of its provisions, my friends Messrs T V Viswanatha Aiyar and S Krishnamurthi prepared, mainly for their own study, in parallel columns the sections in Act XI of 1922 and the clauses in the Amending Bill with modifications therein from stage to stage, and the results of their labour in this direction were of considerable use to me

In view of the great changes in the state of the law which every tax-payer has to know, I felt it would be a public service if they took the trouble of getting out a parallel code so as to point out the changes in a prominent manner and bring out a publication which would be of use not merely to the tax-payers but also to lawyers and laymen who have to deal with Income-tax cases either before the Officers of the Income-tax Department or before the High Courts Select extracts and speeches during the passage of the Bill in the Legislature are given in the shape of foot-notes so as to be of help in tracing the scope of the changes

In response to a request from the publishers that some immediate guidance may be given as to the changes made which may be available to tax-payers in preparing their first Income-tax returns and to others interested in the administration of Income-tax, I have given below an idea of the main provisions of the Amending Act

The New Act is called an Amending Act but there is hardly any section of importance in the Act which is left untouched Some sections which have been substituted in the place of the existing ones and others which have been newly introduced have radically altered the existing law and after incorporating the present amendments, one will find that he has got practically a new Act In the Act before the amendment there were 96 sections comprising the original sections and the additions under various Amendment Acts As many as 65 out of the 96 sections have been amended, 6 sections completely substituted, 5 sections omitted and 14 newly added Complications of interpretation are inevitable and the help of professional men would be more constantly required under the new enactment than under the old

The Act is frankly designed to bring in more revenue to the Exchequer by closing all existing defects or loopholes in the Act leaving no chance for tax

dodgers being left free and by extending the scope of taxation by bringing into the net fresh items of income The administrative machinery has been strengthened and improved so as more effectively to deal with evasion of tax It has been claimed by the framers of the Act that there has been no fundamental alterations but on a perusal of the provisions one feels that there have been sudden and abrupt variations of the principles of taxation

The assessment of foreign income has been the most contentious and complicated item of discussion in the Assembly Indeed at one stage, it appeared that the Bill would not be proceeded with But Sir James Grigg skilfully avoided such an ending and with the co-operation of the Congress Party and the Muslim League, a compromise formula was adopted and passed by the Assembly under which foreign income is made assessable on an accrual basis despite its non-receipt in British India

The main changes and the new provisions of the Amending Act are best considered under distinct headings

I Compulsory returns

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III Basis of assessment

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XV Amounts hitherto not assessable now made assessable

I Compulsory Returns of Income

A system of compulsory returns has been introduced in S 22 as in the United Kingdom The issue of a notice calling for a return of income is made optional Each person whose total income exceeds the taxable limit must voluntarily send a return of income within 60 days of the income-tax authorities giving notice by publication in the press and an assessee may apply and obtain extension of time for the delivery of the return Hitherto there was no

pecuniary penalty leviable by an Income-tax Officer for non-submission of a return but only a prosecution before a Magistrate under S 51 of the Act Now, pecuniary sanction by way of imposition of penalty by the Income-tax Officer himself for non-submission of returns is provided for The penalty for non-submission of a return is up to a limit of 1½ times the tax levied, while the penalty for non-production of evidence after submission of a return is less, that is, up to a limit of 1½ times the difference between the tax leviable on the returned income and the income assessed. But in the case of a person whose total income is less than Rs 3,500 or in the case of an agent of a non-resident, no penalty can be levied for non-submission of return unless a notice calling for a return of income is served on him If a person who has failed to submit a return even after being served with an individual notice calling for the return of income proves that he had no assessable income, a nominal penalty is leviable up to a maximum of Rs 25

II Return of information and furnishing particulars

(i) Hitherto persons who pay interest of Rs 1,000 and above had voluntarily to furnish a return of the names and addresses of all persons to whom such interest was paid and now the limit has been reduced to Rs 400

(ii) Every person engaged in any business profession or vocation should furnish along with his return of income full particulars of location and style of principal place, branches, names, addresses and shares of partners

(iii) The assessee, when required, has to furnish a statement of persons to whom rent, interest, commission, royalty or brokerage, etc, amounting to more than Rs 400 is paid in any year

(iv) The officer may require any person to furnish particulars of all securities of which he was the owner during the period specified in the notice for the purpose of discovering whether through any transaction or dealings in the securities, he has evaded payment of proper tax Failure to give such information entails a very heavy penalty

(v) The trustees of approved superannuation funds and employers who contribute to approved superannuation funds have, when required, to furnish particulars of contributions, the names and addresses of every person in receipt of annuity, the amount of the annuity payable to each annuitant, contributions returned to the employer or employees and sums paid in commutation or in lieu of annuities

(vi) Where an employer pays emoluments to employee or makes on his behalf any contributions to an approved superannuation fund he shall include all such payments and contributions in the annual return under S 21

III Basis of assessment

The new Act makes a differentiation between classes of residence—resident and ordinarily resident, and resident but not ordinarily resident—as affecting taxability The basis of liability to tax differs according to whether the tax-payer is or is not ordinarily resident

Persons who are resident in British India and also ordinarily resident have to pay tax in respect of Indian as well as foreign income, *i e*, on (*a*) income accruing or arising in British India, (*b*) on hitherto unassessed foreign income from 1st April, 1933, brought into British India, and (*c*) each year's

foreign income accruing from 1st April, 1938—a sum up to Rs 4,500 in this category is not taxable in that year if it is not brought into British India. But even here the same will be liable to be taxed in later years as and when it is brought into British India Persons who are "resident" but are "not ordinarily resident" in British India have to pay tax (a) on all income accruing or arising in British India, (b) on foreign income brought into or received in British India, and (c) on all income accruing or arising out of a business controlled in or a profession or vocation set up in India (including Indian States) whether brought into British India or not It will thus be seen that the difference in the basis of taxation between the above two classes of residents is that while the person who is resident and ordinarily resident in British India pays tax each year on all his income, British Indian and foreign, on the accrual basis ('total world income"), the person who is resident but not ordinarily resident does not pay tax (a) in respect of income accruing or arising outside British India from a business *not* controlled in or a profession or vocation not set up in India and (b) in respect of income accruing or arising *otherwise* than from a business controlled in or a profession or vocation exercised in India Nevertheless, such income is liable to be taxed in his hands as and when the same, is brought into British India In the case of persons who are not resident in British India, the tax is payable only in respect of income accruing or arising or deemed to accrue or arise in British India Residence is an attribute which an individual acquires according to the circumstances of his life in each year in question and the tax-payer's chargeability in each assessment year constitutes a separate issue The question of residence in any particular case can only be determined by reference to the facts of the case each year though the facts applicable to several years may become necessary to be found in one continuous story

S 4-A enacts a set of rules in order that a person may know with as much accuracy as possible, what degree of residence will subject him to liability to tax in India

The definition of residence is in substance as follows —

To be a resident in the account year, *i e*, the previous year to the year of assessment an individual must have been (a) in British India for half the number of days in the year (to be correct 182 days) or (b) must have maintained a dwelling house in British India and must have visited British India at least once during the year no matter for how short a period even it be a single day or (c) must have been in British India for periods amounting to a year during the preceeding four years and must have visited British India during the year otherwise than on an occasional or casual visit If an individual does not visit this country at all during any year though he has a dwelling house available for him, he is not to be regarded as resident An individual is "not ordinarily resident" if he is not resident in British India in nine out of the ten preceding years or if he has not during the seven preceding years been in British India for a total period of two years

A company is deemed to be resident in British India if it is wholly controlled in British India or if more than half its entire income arises in British India The distinguishing features of an individual person's residence are almost completely absent in the case of a body corporate A company cannot normally have a residence that is other than ordinary although that residence may be one of several Therefore if a company is resident it is treated as ordinarily

resident as well Thus there is no distinction between residence and ordinary residence in the case of a company So in the case of a company, if it is controlled wholly in British India or its income arising in British India is more than half its total world income, then it is taxable on all its world income

A Hindu undivided family is resident unless the control and management of its affairs is wholly outside British India and is deemed to be ordinarily resident only if its manager is ordinarily resident in British India

In the case of firms or other association of persons, they are resident and ordinarily resident if they are not wholly controlled or managed outside British India

The rate of tax applicable to residents and non-residents is different The resident is assessed on the rate applicable to his income A distinction is also made among the non-residents between British subjects and non-British subjects A non-resident who is a British subject or a subject of a State in India or Burma pays income-tax and super-tax on his total income at the average rate applicable to his total world income This class of non-residents will not have to pay tax on British Indian income if there is a world loss,—which was not the case before the Amendment A non-resident who is not a British subject pays income-tax at the maximum rate on his total income and super-tax at the average rate applicable to his total world income

No provision has been introduced here as in U S A to compel non-residents to satisfy the Government, before they leave this country, that they have paid all tax due in respect of income earned here though there is however a provision regarding foreign ships which are not allowed to leave a British Indian port without a clearance certificate that tax has been duly paid

IV Special provisions against avoidance

The rising burden of income-tax and super-tax has brought about many methods of avoidance of this liability very largely through the media of company formation and transfer of assets to others both in and out of British India and making settlements of income or properties When super-tax was first imposed in 1917, the maximum rate for income-tax was 1 anna in the Rupee and for super-tax 3 annas in the Rupee The first Rs 50,000 was exempt from super-tax Rates have since been increased The maximum income-tax rate together with surcharge hitherto was 28 1/6th pies in the Rupee and for super-tax 6 annas 9¼ pies in the Rupee The exemption limit was later lowered to Rs 30,000 from Rs 50,000 Individuals having substantial incomes thus had to pay heavy sums by way of tax, and therefore there was the incentive to minimise income-tax and super-tax burden to the lowest possible limits

As the machinery of avoidance was very widely adopted in relation to the following matters, the Government felt its duty to close up all material loopholes by enacting certain provisions restricting legal methods in regard to.

(a) Limited companies and accumulated profits
(b) Transfer of assets abroad
(c) Transactions in securities and sales cum dividend
(d) Settlements and Trusts
(e) Dividends

(a) Limited companies and accumulated profits.

A most convenient method of avoidance was to form companies in and out of British India transferring assets to them so that the income (British Indian and foreign) accruing to the companies and accumulated in the companies' hands may avoid taxation either by not distributing dividends or by distributing income in the shape of capital The issue of income in the form of shares instead of dividends by the retention of the company's income with the company itself was held to be capital receipt and this principle was applied even to cases of issue of debentures by the company As the machinery of companies was successfully employed for legitimate tax avoidance and it began to be widely adopted, the Legislature attempted to dam the leakage by enacting S 23-A of the Act

The several requisites necessary to set in motion S 23-A machinery led to great uncertainties and possibilities of challenge varying with types of businesses and the Crown had also to prove that the avoidance was with an intention to evade payment of tax before a direction could be made under the section. The section was applied only in two cases and it could not be made use of in other cases

S 23-A is now made applicable to all companies in which the public is not substantially interested, and not merely to companies which are under the control of not more than 5 persons The section says that where the profits and gains distributed as dividends by a company up to the end of the sixth month after its accounts for the previous year are laid before the company in the General Meeting together with the income-tax payable thereon is less than 60 per cent of the assessable income of the company of the previous year, the Income-tax Officer shall, unless he is satisfied that having regard to losses incurred in earlier years or to the smallness of the profits made, the payment of dividend or a larger dividend would be unreasonable, make an order that the assessable income shall be deemed to have been distributed as dividend among the shareholders and included in the shareholders' total income Where the accumulated undistributed profits exceed the value of the fixed assets or the paid-up capital together with any loan capital belonging to shareholders' 100 per cent is substituted for 60 per cent A further provision is also made to make allowance for a possible case of error in which though if 60 per cent of the assessable income of the company has not been actually distributed, an amount not less than 55 per cent has been distributed and the company is given a chance to distribute the balance of 5 per cent also and thus avoid S 23-A proceedings

The proviso has also been altered so as not to apply the section to subsidiary companies of a company in which the public are substantially interested if the whole of the share capital of such subsidiary company is held by the parent company or by the nominees thereof Further consequential amendments have been made to the section and it is also made clear that where a company is a shareholder of a company to which the section applies the amount of the dividend deemed to have been paid to the shareholder company shall be deemed to be part of its total income for the purpose of application of the section to distribution of profits by the shareholder company The tax due by the shareholder is now to be recovered from the company, only if it cannot be recovered from the shareholder The previous approval of the Inspecting Assistant Commissioner is also necessary before an order is passed by the Income-tax Officer.

S 33-A of the Act which provided an appeal from a decision of the Income-tax Officer under S 23-A to a Board of Referees has now been omitted and an appeal is provided to the Appellate Assistant Commissioner under S 30

The amended section relieves the Income-tax Officer of the duty of determining whether the profits and gains are allowed to accumulate beyond its reasonable needs, existing and contingent, having regard to the maintenance and development of its business and an enquiry as to whether there was an intention to evade payment of super-tax by the members

(b) Transfer of assets abroad

The new S 44-D has been enacted to bring into the net of taxation persons who with a view to avoid tax transfer their assets abroad to persons or to companies incorporated outside British India

These are cases where by a transfer of assets and by a series of transactions, income is paid or becomes payable to a person 'not resident' or to a person 'resident but not ordinarily resident', but the person who so transfers is really in control of and in some cases in enjoyment of the income of such other person This provision is analogous to cases of settlement of income on others while in fact the settlor has power over or is in enjoyment of the income

This section will not apply to any individual who shows to the satisfaction of the Officer either that (1) avoiding liability to taxation was not the purpose or one of the purposes, for which the transfer or associated operation or any of them were effected or (2) that the transfer or any associated operations were *bona fide* commercial transactions and were not designed for the purpose of avoiding liability to taxation

(c) Transactions in securities and sales cum dividend

Under sub-Ss (1) and (2) of S 44-E it is provided that if an owner sells or transfers securities, stocks or shares and by the agreement of sale or by any collateral agreement buys back or re-acquires the securities, stocks or shares any interest or dividend thereon which as a result of the transaction becomes receivable by any other person is to be deemed to be the income of the original seller for all the purposes of the Act, that is, income-tax and super-tax

Under sub-sections (3) and (4) it is provided that where any person carrying on business which consists wholly or partly in dealing in securities, stocks and shares buys or acquires securities, etc, and under the agreement for purchase or collateral agreement sells back or re-transfers the securities, etc, and the result of the transactions is that interest is receivable by him, no account shall be taken of the transaction in computing his profits or loss in business

The scope for avoidance referred to above was due to the legal position that interest on securities and dividends did not accrue day to day but were receivable only on the day the holder is entitled to draw them

This provision has been introduced as it was found that several lakhs of rupees per annum representing tax on interest on securities, etc, were being refunded as a result of owners of securities etc arranging with a person not liable to income-tax or liable to a lower rate of tax to sell or transfer those securities to him shortly before interest or dividend becomes due, and to buy back or get a retransfer after interest or dividend is paid

The original seller receives interest or dividend in the form of price that is capital appreciation not chargeable with super-tax, and where the purchase is made by a person whose business is to buy and sell securities, and he resells shortly after the payment of interest or dividend, loss in the transaction is allowable to him and could be set off against other income received by him

S 44-F deals with a case of an individual escaping income-tax or super-tax by selling his securities in the market and rebuying after the due date for payment of interest

(d) Settlements and trusts

A variation in the ordinary Law of Trusts is introduced in S 16 of the Act to cover certain cases of evasion of income-tax. In England the Law of Trusts was utilised as a device to evade tax and special provisions were made The various Finance Acts and Part 4 of the English Finance Act of 1938 contains a fasciculus of sections designed to deal with such cases Similar provisions are also enacted under the Indian Amending Act to deal with income transferred by way of settlements or dispositions or revocable transfer of assets with a view either to evade tax or to make the tax payable at lesser rates The section deals with those classes of cases in which provision is made for the retransfer directly or indirectly of the income or assets to the transferor or settlor or in any way gives him the right to reassume power directly or indirectly over the income or the assets Sums payable under such settlements or dispositions are to be included in the income of the settlor But where the settlement is not revocable for a period of six years or for the lifetime of the beneficiary, the case is outside the pale of the Act and is not taxable in the hands of the settlor But even here once the power to revoke arises, the Act applies

The section applies even to transactions before the Amending Act and to all cases of Trusts or Settlements, however *bona fide* they may be, which come under the provisions of the Act In effect those dispositions or transfers to which the section applies are to be regarded as having been made with a view to evasion of income-tax

The conditions obtaining in India do not lend scope to the wide use of the Law of Trusts for avoiding taxation, and Trusts are usually effected in this country to provide maintenance for dependant relatives and members of one's family, the corpus reverting to the settlor when the purpose of the Trust is served

In the present provisions, the maxim that the way in which one's income is applied cannot affect the liability to tax of the person to whom the income arises is applied In other words the arrangement is treated as a method of utilisation of or an expenditure out of one's income and should be regarded to be on the same footing as items of expenditure which are not allowable deductions under the Act Tax-payers are thus liable to pay tax upon items of income which they cannot themselves enjoy

Under the old Act, trustees or guardians for several beneficiaries are treated as an Association of Persons and single assessments on income belonging to several beneficiaries or wards were made in the hands of the trustee or guardian This has been rectified in the Amending Act by making the assessments on trustees at rates applicable to the income of each beneficiary,

the trustee being assessed only as the agent of each beneficiary The tax to be paid by the trustee is analogous to that of an employer paying the tax due by the employee on salaries

(e) **Dividend**

One of the usual methods adopted to avoid super-tax which would otherwise be payable by shareholders was to distribute profits in the form of capital receipts like bonus shares, bonus debentures, etc, which under the law as it stood was not income in the hands of the shareholders and hence not liable to tax.

"Dividend" has now been defined to include thereunder the distribution of capitalised profits which entails release by the company to the shareholders of any assets of the company and debenture-issues out of the accumulated income The new definition covers the case where a company goes into liquidation and distributes the accumulated profits which arose during the 6 previous years preceding the date of liquidation and also includes any distribution by a company on the reduction of its capital to the extent to which the company possessed accumulated profits which arose after the end of the previous year ending next before first day of April, 1933 The "dividend" as now defined is included in the definition of income The definition is aimed more at shareholders of companies formed for the purpose of reducing tax payable by individual shareholders than at companies carrying on legitimate business It does not include any distribution by way of bonus shares as it does not entail release of any assets by the company but only means the user of such assets in the company itself by way of increase of capital

Under Explanation (3) to S 4 (1) a 'dividend' paid without British India is now to be deemed income accruing or arising in British India to the extent to which it has been paid out of profits subjected to income-tax in British India

Until now under S 14 'dividend' received by a shareholder was exempt from taxation to income-tax in his hands This exemption proceeded on the idea that for revenue purposes a joint stock company should be treated as a large partnership, so that the payments of income-tax by the company would discharge the quasi-partners The consequence of this legislative outlook was that a "dividend" was really a division of profits and when a payment is made to shareholders it is a mere distribution for which the shareholders incurred no liability The new Act has deleted 'dividends' from S 14 and dividends will no longer be exempt from taxation

As a corollary, by a new S 49-B, payment of income-tax by a company is deemed payment by a shareholder on so much of the dividend as the amount of income on which the company has paid income-tax bears to the whole income of the company

By amendment to S 18, 'dividend' is placed on the same footing as interest on securities and credit is to be given in the assessment of the shareholder for the appropriate amount of tax

The effect of the above provisions of the Amendment Act is that shareholders are now made liable to be taxed even in respect of income which was exempt in the hands of the company.

V Change from the step system to slab system

Another great change in the system of taxation in the Amending Act is the introduction of the slab system Under this system, every slice of income is taxed at a particular rate The rate on higher incomes increases as the income increases Progressive rates are applied to successive slices of income as is already the case in respect of super-tax There are no sudden jumps, as in the step system, as the income increases It was stated by the Finance Member that under this system on the basis on the standard rate suggested by the Income-tax Enquiry Committee which has now been adopted, all persons getting incomes of Rs 8,000 and under will pay less than the present tax, while of the persons getting incomes between Rs 8,000 and Rs 24,000, some will pay less and some more and all persons getting incomes or over Rs 24,000 will decidedly pay more as tax The introduction of this system has also necessitated the insertion of a clause providing for the calculation of tax in cases where out of the total income, certain sums are exempted from payment of tax, namely, life insurance premia, etc In such cases the tax shall be an amount bearing to the total amount of income-tax excluding super-tax which would have been payable on the total income had no part of it been exempted, the same proportion as the unexempted portion of the total income bears to the total income

VI Salaries

Under the Act as it stood income under the head salaries was taxable only on payment and receipt Tax was being postponed or evaded by postponing the receipt of salary or by taking advances or loans

The Act has now been amended to cure these defects so as to make sums due under that head liable on the date when they are due whether paid or not, and advances by way of loans or otherwise of income are hereafter deemed salary due on the date they are received

But to safeguard against possible hardships to the employees due to the insolvency of the employer or other causes, the employee cannot be called upon to pay the tax himself unless he has received the salary without such deduction

The Privy Council in *Commissioner of Income-tax, Bengal* v. *Shaw, Wallace & Co*, (1932) 63 M L J 124=L R 59 I A 206=I L R 59 Cal 1343 (P C), held that capital sums received as a sort of solatium for compulsory cessation of business or in commutation of pension, or as a consolidated compensation for death or injuries or in payment of insurance policy or as the accumulated balance from a Government Provident Fund, cannot in any scheme of taxation be regarded as income Income has now been defined in the Act as including a profit received in lieu of salary as provided in explanation (ii) to sub-S (1) of S 7 This explanation says that a payment due to or received by an employee from an employer or from his Provident Fund at or in connection with the termination of his employment (not including his own contribution) is to be deemed salary provided it is a payment not made for loss of office but by way of remuneration for past services The result of this is to nullify the effect of the Privy Council decision to the extent stated

Exception is however made in favour of payment made out of recognised provident funds and approved superannuation funds

Changes have also been made in regard to deduction of tax at source. Hereafter not only income-tax but super-tax should be deducted at source and provision has also been made to deduct income-tax and super-tax at specified rates in respect of salaries paid to non-residents

By Explanation (2) to S 4 (1) all income which would be chargeable under the head salaries if payable in British India and not being pension payable without British India, is deemed to accrue or arise in British India wherever paid if it is earned in British India

The Legislature is able to deal with such cases by deeming it income accruing or arising in British India and securing the tax thereon by providing for deduction of tax at source

For example if a person entered into a contract of service with his employer in British India and was appointed as a travelling representative outside British India, he will be liable to tax on his salary even though his salary was payable, under the contract, outside British India

VII Firms—Registered and unregistered

The position of Registered and Unregistered Firms has been fundamentally modified No tax is levied on a Registered Firm but a computation of the income and profits of the firm is made The share in the profits of the firm of each individual partner is directly assessed on him along with his other income If there be loss in the registered firm the share of loss of each partner could be set-off against his other income and where it could not be wholly set off the portion not set-off can be carried forward to the following year up to a period of six years, the first of the six years commencing from April, 1939. But such carrying forward of losses is permitted to be set-off only against the profits of the same business, profession or vocation An unregistered firm is assessed to tax and if loss is incurred by an unregistered firm it could only be set-off against other income if any of the firm itself and not against the income, profits and gains of any of the partners of the firm But if the unregistered firm is treated as a registered firm by the Officer of his own motion in circumstances set out below the benefits accruing to partners of a registered firm equally apply to the partners of the unregistered firm. Another new feature introduced in regard to an unregistered firm is that if the aggregate amount of tax including super-tax payable by the partners if assessed in the manner laid down for registered firm would be greater than the total tax payable by the firm if assessed as an unregistered firm, the Officer is empowered to place the unregistered firm in the position of a registered firm In other words if the partners of an unregistered firm would pay less tax than if the firm had been treated as a registered firm, the Officer can of his own motion act as if the firm got itself registered

VIII Assessment of Insurance Companies

The method of assessment now adopted has been changed which gives considerable relief to the companies Hitherto an Insurance Company was assessed on the surplus between the assets and the annual valuation of liabilities without taking into consideration the sum re-distributed among the policy holders in the shape of bonus

Under the Amending Act the Department has two methods of computation to choose from either the income on investments less expenses, or the

alternative basis of the surplus as hitherto, allowing for a moiety of the bonus paid to the policy-holders which is really to a certain extent their own premia collected in excess What was not wholly income was being taxed hitherto by adopting the method based on the actuarial surplus But this has been remedied now by adopting a more accurate method of computation either on the basis of actuarial surplus or the basis of income less expenses whichever is the greater

IX Carrying forward losses

Another of the important changes effected in the Act is that an assessee is permitted to carry forward the losses incurred by him in one business and have it set off against his income from the same business in the succeeding years up to a period of six years But during the transition stage, such carrying forward is restricted The losses incurred in the account years 1938-39 to 1942-43 can be so carried forward only to one, two, three, four and five years respectively This carrying forward of losses is apart from the other provision by which a loss incurred by a person in any year under any head can be set off against his income, profits and gains under the other heads in the same year But the carrying forward of loss for setting off can only be against the subsequent income from the same business If a business which has suffered loss is discontinued, such loss cannot be set-off in the succeeding years since that business no longer exists to yield income and such loss would become a capital loss Such carrying forward is also not permitted if there is a change in the constitution of a firm or if a person is succeeded by another person except by way of inheritance, as the object is to confer the privilege to the particular persons incurring the loss A person who is a partner in a registered firm can have his share of loss incurred in a year set-off against his other income in the same year and can also carry forward the loss or the balance of loss and set it off against his share of income from the same business in the subsequent years Where a person is a partner in an unregistered firm and the unregistered firm sustains a loss in any year, his share cannot be set off against his other income even in the same year The loss can be set-off only against the profits and gains of the unregistered firm in the succeeding years. Where an unregistered firm is treated and assessed by the Income-tax Officer as a registered firm, then the provisions in respect of a registered firm also apply to such a firm

X Depreciation Allowance on Buildings, Machinery and Plant

The present method of granting allowances for depreciation is the straight method of allowing particular percentages on the original cost till the original cost is exhausted In modification of the present straight method, the written down method, that is, allowance on the written down value of such machinery, etc, each year has been introduced The written down value has to be arrived at or calculated every year Where the assets are acquired or purchased in the year of account, the written down value will be the actual price paid by the assessee for such machinery or plant Where the assets are acquired before the account year but after the commencement of the Amendment Act, the written down value would be the actual price paid by the assessee for such plant or machinery less all depreciation allowance to the assessee for every year after purchase till the account year on such plant or machinery Where the assets have been acquired or purchased before the commencement of the Amendment Act, the written down value will be the

actual cost of such machinery or plant less for each financial year since acquisition the amount of depreciation applicable to the assets at the rates in force for each such year since 1st April, 1922, and at the rates in force on 1st April, 1922 for each such year prior to that date This change does not come into force till 1-4-1940

Allowance on the basis of the written down value each year necessitates special income-tax treatment of such assets involving the maintenance of a new set of books for all machinery, etc, for purposes of income-tax, so as to display the wear and tear attributed to each unit in order This will facilitate the claim for obsolescence and will avoid difficulties though it involves time and trouble to assessees who have to claim depreciation Valuation of such assets by deducting depreciation for domestic or commercial purposes and the keeping of reserves, etc, has necessarily to be on different principles

XI Allowance for Life Insurance Premia

Hitherto relief was given from the tax payable on the income of any person in respect of premiums paid for insurance on his own life or on the life of his wife or for any deferred annuity on his or his wife's life the relief being subject to the restriction that the total amount of premiums on which relief is given is not to exceed 1/6th of the total income of the assessee

Under the Amending Act while retaining the limit of 1/6th of the total income, the maximum is fixed at Rs 6,000 in the case of an individual assessee and at Rs 12,000 in the aggregate for a joint Hindu family This provision prevents richer assessees from claiming sums in excess of Rs 6,000 or Rs 12,000 as the case may be Another change introduced in the Amending Act is that the wife in her assessment is enabled to claim relief for the premium paid by her on the life of her husband It may be remembered in this connection that in England the life assurance allowance is granted only if the insurance etc, is with a company legally established in the United Kingdom or British Possessions or with any company lawfully carrying on business in the United Kingdom. No such restriction is introduced in the Indian enactment

XII Deductions of Tax at source

The Revenue employs the system of deducting tax at source immediately the income arises, for facility, certainty, early collection and in several cases automatic elimination of tax evasion This system was hitherto adopted in respect of (*i*) Income-tax on Salaries (S 7), (*ii*) Income-tax on Interest on Securities (S 8), (*iii*) both Income-tax and super-tax on interest (not being interest on securities) paid to a non-resident under the circumstances stated in S 18 (3-A) and (3-B), (*iv*) Super-tax on dividends paid to a non-resident S 18 (3-C) and (3-D), and (*v*) payment of accumulations in recognised Provident Fund (58-H)

There was no provision for deducting super-tax in respect of salaries or any tax on salaries paid to non-residents and these have now been remedied by amendments to S 18

Sub-S (2) of S 18 has been amended so as to provide for deduction at source of super-tax also on 'salaries' and not merely income-tax as hitherto-

fore, and the rate at which deduction has to be made is the average of the rates applicable to the estimated total income of the assessee under the head "Salaries" The new sub-S (2-B) directs that if any salary is paid to a person not resident in British India, income-tax at the maximum rate and super-tax at the rates applicable to the estimated income should be deducted

The new sub-S (3-A) provides that any person paying to a non-resident any interest not being interest on securities or any other sum chargeable under the Act, shall deduct income-tax thereon at the maximum rate unless he himself is liable to pay tax thereon as agent

Consequential amendments are also made in the section

Sub-S (5) has been amended to include income-tax on a dividend as a sum for which credit is to be given to a shareholder in his assessment

This amendment puts dividends on the same footing as securities and credit for the appropriate amount of tax on it will be given in the shareholder's assessment

As a corollary, by a new S 49-B, payment of income-tax by a company is deemed payment by a shareholder on so much of the dividend as the amount of income on which the company has paid income-tax bears to the whole income of the company

By Chapter IX-B special provisions are made in regard to certain classes of superannuation funds and the new S 58-S (2) provides that the Trustees of the superannuation fund should deduct income and super-tax at the average rate of tax during the preceding three years in cases where contributions are repaid to an employee during his lifetime but not at or in connection with the termination of his employment This does not apply to persons whose employment was carried on abroad This principle of deduction of tax at source entails the necessity of repayment claims in cases where the receipt of this income is not liable to be assessed or is to be assessed at lower rates

XIII Making of Additional Assessments and Reopening of Assessments

Hitherto the Income-tax Officer could assess only for one previous year on the ground of escape of assessment either wholly or partially This power should be exercised within one year from the end of the year in which the income should be taxed Under the Amending Act, the Income-tax Officer can go back further and reopen a completed assessment or make fresh assessment where no assessment had been made up to a period of four years where there is a *bona fide* error on assessee's part in not returning the income in full But where the Income-tax Officer has reason to believe that the under-assessment was due to the fact that the assessee concealed particulars of his income or deliberately furnished inaccurate particulars, such power to reopen can be exercised for a period of eight years A difference is thus made between a genuine mistake and deliberate mistake to defraud revenue This power can also be invoked in a case where excessive relief has been granted But in practice, this difference will not be made in a majority of cases as every assessee must be aware of his income and know the law and must take the consequence of not disclosing all his income Thus every tax-payer coming

into the net is provided for and power is taken to deal with obstruction and dishonesty An exception has been made in the case of a person who has been assessed as the agent of a non-resident under S 43 where a fresh assessment could be made only within one year from the end of that year Lest the Act should be deemed retrospective, provision is also made that in the case of assessments prior to the commencement of the Amendment Act, such back assessment can be made only within one year from the end of that year What is required in all these cases is that action should be taken under S 34 within the periods mentioned above and the fresh assessments may be completed later To avoid assessments or re-assessments being kept pending for a long number of years it is stated that in all cases assessments or re-assessments should be completed and orders passed ordinarily within four years But where the provisions of cl. (c) of sub-S (1) of the penalty S 28 applies, the same should be done within eight years Since it is the Officer who is finally to decide whether the under-assessment was due to *bona fide* cause or due to the fraud of the assessee, every person should be prepared to submit returns, explain transactions and produce his accounts and evidence in support thereof up to a period of nine years from the date on which the transactions took place This provision necessitates the preservation of all accounts, documents and correspondence and evidence for nearly a decade In such back assessments after a long lapse of years, it is doubtful whether an assessee would be able to explain his accounts in the same manner in which he might be able to do it if he were called upon to do so earlier By the operation of this section, if a fresh assessment is made, it could be only to the disadvantage of the assessee as the assessee is not given an opportunity to show that he is over-assessed and have the assessed income reduced

In cases of succession, the successor cannot be assessed to such tax except for one year (S 26) It is not clear whether this provision could be applied (a) to the case of a Hindu undivided family which becomes divided and ceases to be a joint family and (b) to the case of a company which is dissolved and the Officer finds that its income three or four years previously has been under-assessed

In the case of assessees who are not alive and who escaped assessment, no such limitation of one year is made The law has been amended so as to render legal representatives of an estate liable in respect of income, profits and gains which ought to have been returned and which were not returned for the period of four years or eight years as stated above Thus the estate is made liable to all penalties for fraud or negligence as the Act would have imposed upon the deceased tax-payer, if he had still been alive In the past one assumed that back assessment cases concerned only the living and not the dead, and when the tax-payer died, liability to penalties for negligent or fraudulent returns died with him With death duties on the horizon and imminent, on an investigation into the estate of deceased for death duty purposes, information leading to proceedings for penalties and back assessment can easily reach the Income-tax Officials Figures may raise a *prima facie* case of fraud and the only person who could refute the implication may be the deceased Fraud is both a state of mind and a question of fact and there will be great difficulty in explaining matters and the deceased if alive might have been able to give a perfectly correct explanation of what had taken place and to show that penalty provisions could not be applied The object of these provisions is to raise the morale of the people.

It may be here pointed out that the English Statute (S 29 of Finance Act, 1923) while extending the period of back assessments from 3 to 6 years, specifically provided that in the case of raising fresh or additional assessments on the estate of deceased persons, the three years rule shall be applicable

It is significant to note that there is no complementary provision placing the Tax-payer and the Revenue on an equal footing, though a tax-payer may make an honest mistake and no retrospective right is conferred on him

XIV Assessment, Appeals and Administrative Machinery

Under the Act before the amendment, in cases where the Principal Officer of a company or any other person who is an assessee made defaults and failed to make a return or to comply with all the terms of a notice issued by the Officer requiring him to produce accounts or documents, the Income-tax Officer had power to make an assessment to the best of his judgment and also to cancel the registration of any firm No appeal was provided against such estimated assessment and the only remedy which the assessee had was to apply to the Income-tax Officer himself under S 27 and to get the assessment set aside on satisfying the Income-tax Officer that he was prevented by sufficient cause from making the return or complying with the terms of the notice issued. This led to a great hardship and assessees were unable to fight the assessment on its merits This has now been remedied by making such assessments also appealable in the regular manner similar to an appeal against an *ex parte* decree

In effect it may be said that under the Amended Act all orders passed by the Income-tax Officer affecting the assessee are appealable and this is definitely of great importance If however the appeal is against an order levying penalty for non-payment of the tax within the time allowed, the appeal will be entertained only if the tax has been paid

The duties of the Assistant Commissioner have been separated and two categories of Assistant Commissioners have now been appointed, namely, Inspecting Assistant Commissioners and Appellate Assistant Commissioners, the former have nothing to do with the hearing of the appeals against orders of the Income-tax Officer which is solely entrusted to Appellate Assistant Commissioner Though both categories of Assistant Commissioners are under the control and subject to the jurisdiction of the Central Board of Revenue, the Central Board of Revenue cannot interfere or give any instructions or orders so as to interfere with the discretion of the Appellate Assistant Commissioner in the exercise of his appellate jurisdiction This division of functions is a salutary change As the Appellate Assistant Commissioner performs more or less judicial functions it is now provided that the Income-tax Officer has the right to be represented before him at the hearing of an appeal against an order of the Income-tax Officer

By far the most important change introduced by the Amending Act is the provision made for the introduction of a further appellate authority of an independent nature for the hearing of appeals from decisions of the Appellate Assistant Commissioners

It is provided in Part II of the Amending Act that the Central Government shall appoint an Appellate Tribunal consisting of not more than 10 persons made up of an equal number of judicial members and accountant members.

The normal qualification for a judicial member is that required of a District Judge and the qualification for an Accountant Member is that of an Auditor who has practised for not less than six years But the Central Government may appoint as an Accountant Member, a person who, though not possessing the qualifications aforesaid, by his other qualifications and adequate experience, is found suitable for appointment to the Tribunal

Not less than two members are necessary to form a Bench and the number of Judicial or Accountant Members in a Bench should not exceed each other by more than one The decision of the majority governs the case and in the case of a tie the matter is to be referred to the President of the Tribunal on stated points who refers it for the opinion of other member or members and the final decision is according to the majority opinion of all members who heard it In order that both the department and the assessee may have sufficient time and opportunity to acquaint themselves and be prepared for the change the Appellate Tribunal is not to take effect immediately but is to come into effect not later than two years from the commencement of the Amending Act It is also provided that an assessee may appeal, or the Commissioner if he is not satisfied with the Appellate Assistant Commissioner's order may direct the Income-tax Officer to appeal, to the Appellate Tribunal against the order of the Appellate Assistant Commissioner under Ss 28 or 31 and the appeal should be filed within 60 days of the service of notice of such order The Appellate Tribunal is to decide the appeal after giving notice to both parties and its orders are final except in cases to which S 66 applies (namely statement of case by the Appellate Tribunal to the High Court)

The present Ss 32 and 33 dealing with appeals to the Commissioner against the order of the Assistant Commissioner and power of revision will not operate when the Appellate Tribunal as abovesaid is constituted The Appellate Tribunal is given the power to regulate its own procedure to rectify any mistakes and to take evidence on oath, to call for evidence, production of documents, etc

S 66 as it stood is amended and it is provided that within 60 days from the service of the notice of order by the Appellate Tribunal, the Commissioner or the assessee as the case may be, may file an application (accompanied in the case of the assessee by a fee of Rs 100) requiring the Tribunal to refer to the High Court any question of law arising out of the order of the Tribunal and the Appellate Tribunal is directed to draw up a statement of the case and refer it to the High Court but where the Tribunal refuses to state a case on the ground that no question of law arises, the aggrieved party is given the liberty to move the High Court within 6 months of the date of refusal to direct the Tribunal to state a case and refer it If the Appellate Tribunal refuses to state a case on the ground that the application filed is out of time then also the aggrieved party has got the right to move the High Court within 60 days

It will therefore be seen that two appellate authorities are provided for and there can be two appeals as of right in each case The Appellate Tribunals are hereafter the ultimate judges of fact and not the Assistant Commissioner or the Commissioner and so far as a reference to the High Court is concerned both the Department and the assessee are placed on the same footing

The appointment of an appellate tribunal can be said to be a most important provision in the Amending Act in favour of the assessee and goes

a long way to remove the grievances and complaints made by the assessees hitherto that the scales had not been held even as between the tax-payer and the tax-gatherer

Under S 5 (2) of the Act provision has been made to enable the Government of India to appoint not more than three Commissioners of Income-tax without reference to area to work directly under the Central Board of Revenue

The idea underlying this is to create a centralised or special staff to deal with special branches of work or matters of special difficulty or importance, *e g*, companies, insurance penalty, fraud, etc, and with a view to bring under one head assessment of persons who are assessed in different areas

XV Amounts hitherto not assessable now made assessable

This has been done by enlarging the area of taxation as in S 4 or by extending the definition of income by deeming certain sums as income which were hitherto either held as capital sums or income not liable to tax.

Sums mentioned in the following sections which have been dealt with in detail above under different heads are now taxable as income Ss 2 (6) A, 4 (1) Explanation (2), 4 (1) Explanation (3), 4 (2), 16 (2), 16 (3), 42, 44-D, 44-E, 44-F

Under S 2 (6-C), (i) a profit received in lieu of salary, (ii) sums got in excess of written down value when plant or machinery is sold, (iii) mutual assurance profits, (iv) under cl. (xi) of S 10 (2) the excess sum received over a sum written off as bad debt are deemed income under the new Act

Explanation (3) to S 4 (1) says a dividend paid without British India shall be deemed to be income accruing or arising in British India to the extent to which it has been paid out of profits subject to income-tax in British India By an addition to S 42 of the Act, interest from money lent abroad by a non-resident and brought into British India in cash or in kind (by the borrower) shall be deemed to be income accruing or arising within British India assessable either on the non-resident or his agent

S 60 of the Act gave power to the Governor-General to exempt particular classes of income from tax under which many items of income have been exempted by notification This section has been modified in such a way that while taking away the scope of exercising the power of exemption hereafter, power is retained only for the purpose of revoking or modifying exemptions already given

Under the Act the income from agricultural land in a Native State in India paying land revenue to the Indian State was exempt But such agricultural income would be assessable under the Amendment Act The land tax may be payable to the Native State Government and Income-tax to British Indian Government and there will be no relief against double tax in respect of such taxation Income from agricultural lands in Burma will be assessable in British India on the accrual basis

M SUBBARAYA AIYAR

STATEMENT OF REPEALS AND AMENDMENTS.

SECTION 1, AMENDED	The Government of India (Adaptation of Indian Laws) Order, 1937 Act IV of 1924. Act XI of 1924.
SECTION 2, AMENDED .	Act XXI of 1930 The Government of India (Adaptation of Indian Laws) Order, 1937 Act VII of 1939
SECTION 3, AMENDED	Act XI of 1924. The Government of India (Adaptation of Indian Laws) Order, 1937 Act VII of 1939
SECTION 4, AMENDED	Act XXVII of 1923 Act XI of 1924. Act XII of 1929 Act XII of 1933 Act VII of 1939
SECTION 4-A, INSERTED .	Act VII of 1939
SECTION 4-B, INSERTED . .	Act VII of 1939
SECTION 5, AMENDED .	Act IV of 1924. Act XVIII of 1933 The Government of India (Adaptation of Indian Laws) Order, 1937 Act VII of 1939
SECTION 5-A, INSERTED .	Act VII of 1939
SECTION 6, AMENDED . .	Act VII of 1939
SECTION 7, AMENDED .	Act XV of 1923 The Government of India (Adaptation of Indian Laws) Order, 1937 Act VII of 1939
SECTION 8, AMENDED .	Act XVIII of 1933 The Government of India (Adaptation of Indian Laws) Order, 1937 Act VII of 1939
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SECTION 11, AMENDED . . .	Act XVIII of 1933
OMITTED . . .	Act VII of 1939
SECTION 12, AMENDED	Act VII of 1939
SECTION 12 A, INSERTED .	Act VII of 1939
SECTION 13, AMENDED . .	Act VII of 1939
SECTION 14, AMENDED . .	Act III of 1928 Act XXII of 1930 Act VII of 1939
SECTION 15, AMENDED . . .	Act XI of 1924. Act XII of 1929 Act VII of 1939

SECTION 16, AMENDED	Act XVIII of 1933 Act IV of 1937 Act VII of 1939
SECTION 17, SUBSTITUTED	Act VII of 1939
SECTION 18, AMENDED	Act IV of 1924 Act XVI of 1925 Act XVIII of 1933 Act XII of 1935 Act IV of 1937 The Government of India (Adaptation of Indian Laws) Order, 1937 Act VII of 1939
SECTION 19, AMENDED	Act XVIII of 1933 Act XXIV of 1934 Act VII of 1939
SECTION 19-A, INSERTED	Act XXIV of 1926
SECTION 20-A, INSERTED	Act XVIII of 1933 Act VII of 1939
SECTION 21, AMENDED	Act VII of 1939
SECTION 22, AMENDED	Act VII of 1939
SECTION 23, AMENDED	Act XXI of 1930 Act VII of 1939
SECTION 23-A, INSERTED AMENDED	Act XXI of 1930 Act VII of 1939
SECTION 24, AMENDED	Act XVIII of 1933 Act VII of 1939
SECTION 24 A, INSERTED AMENDED	Act XVIII of 1933 Act VII of 1939
SECTION 24-B, INSERTED AMENDED	Act XVIII of 1933 Act VII of 1939
SECTION 25, AMENDED	Act XI of 1924 Act VII of 1939
SECTION 25-A, INSERTED AMENDED	Act III of 1928 Act XXII of 1930 Act VII of 1939
SECTION 26, SUBSTITUTED AMENDED	Act III of 1928 Act VII of 1939
SECTION 26-A INSERTED	Act XXI of 1930
SECTION 27, AMENDED	Act VII of 1939
SECTION 28, SUBSTITUTED AMENDED	Act XXI of 1930 Act VII of 1939
SECTION 29, AMENDED	Act VII of 1939
SECTION 30, AMENDED	Act XXII of 1930 Act XVIII of 1933 Act XX of 1937 Act VII of 1939
SECTION 31, AMENDED	Act XXII of 1930. Act XVIII of 1933 Act VII of 1939
SECTION 32, AMENDED,	Act XVIII of 1933 Act VII of 1939
SECTION 33-A, INSERTED OMITTED	Act XXI of 1930 Act VII of 1939
SECTION 34, AMENDED	Act VII of 1939
SECTION 35, AMENDED	Act III of 1928 Act VII of 1939

SECTION 37, AMENDED	Act XXII of 1930 Act VII of 1939
SECTION 38, AMENDED	Act XVIII 1933 Act VII of 1939
SECTION 40, AMENDED	Act VII of 1939
SECTION 41, AMENDED	Act VII of 1939
SECTION 42, AMENDED	Act III of 1928 Act VII of 1939
SECTION 43, AMENDED	Act VII of 1939
SECTION 44, AMENDED	Act VII of 1939
CHAPTER V-A, INSERTED	Act XXVII of 1923
SECTION 44-C AMENDED	Act VII of 1939
CHAPTER V-B, INSERTED	Act VII of 1939
SECTION 45, AMENDED	Act XXI of 1930 Act VII of 1939 Act IV of 1924.
SECTION 46, AMENDED	Act III of 1928 Act XVIII of 1933 The Government of India (Adaptation of Indian Laws) Order, 1937 Act VII of 1939
SECTION 47, AMENDED	Act VII of 1939
SECTION 48, AMENDED	Act III of 1928 Act XXII of 1930 Act XVIII of 1933 Act IV of 1937 The Government of India (Adaptation of Indian Laws) Order, 1937 Act VII of 1939
SECTION 48 A, INSERTED AMENDED	Act XVIII of 1933 Act VII of 1939
SECTION 49, AMENDED	Act XXIX of 1934 Act VII of 1939
SECTION 49-A, INSERTED	Act VII of 1939
SECTION 49 B, INSERTED	Act VII of 1939
SECTION 49 C INSERTED	Act VII of 1939
SECTION 49-D INSERTED	Act VII of 1939
SECTION 49 E, INSERTED (as 49-A) AMENDED	Act XVIII of 1933 Act VII of 1939
SECTION 49 F, INSERTED (as 49-B) AMENDED	Act XVIII of 1933 Act VII of 1939
SECTION 50, AMENDED	Act XXII of 1930 Act VII of 1939
SECTION 50 A, INSERTED OMITTED	Act XVIII of 1933 Act VII of 1939
SECTION 51, AMENDED	Act XXIV of 1926 Act XVIII of 1933 Act VII of 1939
SECTION 52, AMENDED	Act XXIV of 1926 Act XXI of 1930 Act XVIII of 1933 Act VII of 1939
SECTION 53, AMENDED	Act VII of 1939 Act XXI of 1930
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SECTION 55, AMENDED .	The Government of India (Adaptation of Indian Laws) Order, 1937 Act VII of 1939
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SECTION 57, AMENDED	Act XXIV of 1926 Act XVIII of 1933
OMITTED .	Act VII of 1939
SECTION 58, AMENDED	Act XII of 1929 Act XVIII of 1933
CHAPTER IX-A, INSERTED .	Act XII of 1929 Act VII of 1939.
SECTION 58-A AMENDED	Act VII of 1939
SECTION 58-B, AMENDED	The Government of India (Adaptation of Indian Laws) Order, 1937. Act VII of 1939
SECTION 58 C, AMENDED .	Act IV of 1931 The Government of India (Adaptation of Indian Laws) Order, 1937
SECTIONS 58-D AND 58-F, AMENDED .	The Government of India (Adaptation of Indian Laws) Order, 1937
SECTION 58-F, AMENDED . . .	Act VII of 1939
SECTION 58-G, AMENDED . .	Act XVIII of 1933. Act VII of 1939
SECTION 58 H, AMENDED . .	Act XXIV of 1937 Act VII of 1939
SECTION 58-K, AMENDED .	Act VII of 1939
SECTION 58 L, AMENDED	The Government of India (Adaptation of Indian Laws) Order, 1937.
CHAPTER IX-B, INSERTED . .	Act VII of 1939
SECTION 59, AMENDED .	Act IV of 1924. Act XXVIII of 1927 The Government of India (Adaptation of Indian Laws) Order, 1937 Act VII of 1939
SECTION 60, AMENDED	Act XXII of 1930 Act XVIII of 1933 The Government of India (Adaptation of Indian Laws) Order, 1937. Act VII of 1939
SECTION 61, AMENDED . . .	Act VII of 1939
SECTION 63, AMENDED . .	Act VII of 1924. Act XI of 1924. Act VII of 1939
SECTION 64, AMENDED . .	Act IV of 1924
SECTION 66, AMENDED .	Act XI of 1924 Act XXIV of 1926 Act III of 1928 Act XXI of 1930 Act XXII of 1930 Act XVIII of 1933 Act VII of 1939
SECTION 66-A, INSERTED . . .	Act XXIV of 1926
AMENDED	Act VII of 1939
SECTION 67, AMENDED .	The Government of India (Adaptation of Indian Laws) Order, 1937

SECTION 67-A, INSERTED	Act XXII of 1930
SECTION 68, REPEALED	Act XII of 1927
SCHEDULE—REPEALED	Act XII of 1927
INSERTED	Act VII of 1939

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* *Denotes that the sections have been amended*
Italics denote new sections

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THE

INDIAN INCOME-TAX ACT

ACT No. XI OF 1922.

[5th *March*, 1922.]

An Act to consolidate and amend the law relating to Income-tax and Super-tax

[As modified up to 1st April, 1939]

WHEREAS it is expedient to consolidate and amend the law relating to Income-tax and Super-tax; it is hereby enacted as follows:—

Short title, extent and commencement

1. (1) This Act may be called THE INDIAN INCOME-TAX ACT, 1922.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas, and applies also, within the Indian States and the tribal areas, to British subjects who are in the service of the Crown or of a local authority established in the exercise of the powers of the Crown Representative or the Central Government in that behalf, and to all other servants of the Crown in the said States and areas.

(3) It shall come into force on the first day of April, 1922.

Definitions

2. In this Act, unless there is anything repugnant in the subject or context,—

NOTES

The Amending Act comprises 92 sections. Section 1 deals with the title and commencement. Part I contains sections 2 to 84 and Part II sections 85 to 92. Part II deals with the Appellate Tribunal and comes into force from a date not later than two years from the date of coming into force of Part I to be notified by the Central Government. Part I is incorporated in the text and Part II is separately printed at the end (Appendix A) and also under each section. April 1st 1939, is appointed for Part I to take effect (except clauses (vi) and (vii) of sub-section (2) of section 10 which takes effect only on April, 1st 1940.) [*Gazette of India 18th March*, 1939]

ACT No. VII OF 1939

An Act further to amend the Indian Income-tax Act, 1922 (17th *March*, 1939)

WHEREAS *it is expedient further to amend the Indian Income-tax Act*, 1922, *for the purposes hereinafter appearing. It is hereby enacted as follows:*—

1. (i) *This Act may be called the Indian Income-tax (Amendment) Act*, 1939.

(ii) *This section and Part I shall come into force on such date as the Central Government may by notification in the Official Gazette, appoint, and Part II shall come into force on such subsequent date not later than two years from the date appointed for the coming into force of Part I as the Central Government may, in like manner, appoint.*

Provided that sub-clauses (vi) *and* (vii) *of clause* (b) *of section* 11 *shall not take effect earlier than the* 1st *day of April*, 1940.

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Special provisions relating to certain classes of Super-annuation Funds

CHAPTER X

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THE
INDIAN INCOME-TAX ACT
ACT No. XI OF 1922.

[5th March, 1922.]

An Act to consolidate and amend the law relating to Income-tax and Super-tax

[As modified up to 1st April, 1939]

WHEREAS it is expedient to consolidate and amend the law relating to Income-tax and Super-tax; it is hereby enacted as follows:—

Short title, extent and commencement

1. (1) This Act may be called THE INDIAN INCOME-TAX ACT, 1922.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas, and applies also, within the Indian States and the tribal areas, to British subjects who are in the service of the Crown or of a local authority established in the exercise of the powers of the Crown Representative or the Central Government in that behalf, and to all other servants of the Crown in the said States and areas

(3) It shall come into force on the first day of April, 1922

Definitions

2 In this Act, unless there is anything repugnant in the subject or context,—

NOTES

The Amending Act comprises 92 sections Section 1 deals with the title and commencement Part I contains sections 2 to 84 and Part II sections 85 to 92 Part II deals with the Appellate Tribunal and comes into force from a date not later than two years from the date of coming into force of Part I to be notified by the Central Government Part I is incorporated in the text and Part II is separately printed at the end (Appendix A) and also under each section April 1st 1939, is appointed for Part I to take effect (except clauses (vi) and (vii) of sub-section (2) of section 10 which takes effect only on April, 1st 1940) [*Gazette of India 18th March*, 1939]

ACT No VII OF 1939

An Act further to amend the Indian Income-tax Act, 1922 (*17th March*, 1939)

WHEREAS *it is expedient further to amend the Indian Income-tax Act*, 1922, *for the purposes hereinafter appearing, It is hereby enacted as follows* —

1 (*i*) *This Act may be called the Indian Income-tax (Amendment) Act*, 1939

(*ii*) *This section and Part I shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and Part II shall come into force on such subsequent date, not later than two years from the date appointed for the coming into force of Part I, as the Central Government may, in like manner, appoint*

Provided that sub-clauses (*iii*) *and* (*iv*) *of clause* (*b*) *of section* 11 *shall not take effect earlier than the* 1st *day of April*, 1940

(1) "agricultural income" means—

(a) any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land-revenue in British India or subject to a local rate assessed and collected by officers of the Crown as such;

(b) any income derived from such land by—

(i) agriculture, or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in sub-clause (ii),

(c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator, or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any operation mentioned in sub-clauses (ii) and (iii) of clause (b) is carried on

Provided that the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator or the receiver of the rent-in-kind by reason of his connection with the land, requires as a dwelling-house, or as a store-house, or other out-building,

(2) "assessee" means a person by whom Income-tax is payable;

OLD	NEW
(3) "Assistant Commissioner" means a person appointed to be an Assistant Commissioner of Income-tax under section 5;	(3) "*Appellate* Assistant Commissioner" means a person appointed to be an *Appellate* Assistant Commissioner of Income-tax under section 5,

(4) "business" includes any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce or manufacture,

(4-A) "the Central Board of Revenue" means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924,

(5) "Commissioner" means a person appointed to be a Commissioner of Income-tax under section 5,

(6) "company" means a company as defined in the Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament or of Royal Charter or Letters Patent, or of an Act of the Legislature of a British possession, and includes any foreign association carrying on business in British India whether incorporated or not, and whether its principal place of business is situate in British India

or not, which the Central Board of Revenue may, by general or special order, declare to be a company for the purposes of this Act.

New.

(6A) "dividend" includes—

(a) any distribution by a company of accumulated profits, whether capitalised or not, if such distribution entails the release by the company to its share-holders of all or any part of the assets of the company.

(b) any distribution by a company of debentures or debenture-stock, to the extent to which the company possesses accumulated profits, whether capitalised or not;

(c) any distribution made to the shareholders of a company out of accumulated profits of the company on the liquidation of the company

Provided that only the accumulated profits so distributed which arose during the six previous years of the company preceding the date of liquidation shall be so included, and

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NOTES

Section 2, sub section (6 A)—a new provision—defines "dividend"

To prevent the avoidance of super tax which would otherwise be payable by the shareholders by the device of distributing the profits in the form of bonus shares bonus debentures or some other form which, as the law stands at present are capital receipts and not income in the hands of the shareholders, dividend is defined in such a way that wherever the shareholders receive profits in any of such forms it can be treated as income for tax purposes The definition also covers the case where a Company goes into liquidation and the accumulated profits are distributed by the liquidator to the former shareholders Income is then defined in section 2, clause (6 *C*) to include any dividend as defined in section 2, clause (6 *A*), and also to include distributions from unrecognised Provident Funds *Objects and Reasons*

Section 2 —We have recast and expanded the definition of "dividend," primarily in order to ensure that no distribution falling under this head shall be taxed unless there is a release of assets Under the amended definition, a debenture will, when issued be treated as a dividend but an ordinary bonus share will not be liable to taxation until it is actually paid off The definition further secures that accumulated profits distributed on the liquidation of the company shall only be included in dividend for the purposes of taxation, if they arose within six years of the liquidation Clause (*d*) of the revised definition provides for the case in which a company tries to disguise a distribution of profits as a reduction of capital The words inserted in the new sub clause (*a*) of clause (11) of section 2 of the Act by clause 2 (*c*) (*iii*) of the Bill merely makes a correction overlooked in the Bill, and necessary in view of the revised wording of section 10 of the Act *Select Committee Report*

Section 2 --(6 *A*) 'dividend' as defined makes the decision of the Privy Council in *Commissioner of Income tax* v *Mercantile Bank of India*, (63 I A 457, 1937 (1) Cal 180,

OLD.	NEW
	(d) any distribution by a company on the reduction of its capital to the extent to which the company possesses accumulated profits which arose after the end of the previous year ending next before the 1st day of April, 1933, whether such accumulated profits have been capitalised or not
	Provided that 'dividend' does not include a distribution in respect of any share issued for full cash consideration which is not entitled in the event of liquidation to participate in the surplus assets, when such distribution is made in accordance with sub-clause (c) or (d)
	Explanation —The words 'accumulated profits', wherever they occur in this clause, shall not include 'capital profit'
(6-A) 'firm', 'partner' and 'partnership' have the same meanings respectively as in the Indian Contract Act, 1872;	(6-*B*) 'firm', 'partner' and 'partnership' have the same meanings respectively as in the *Indian Partnership Act* 1932 *provided that the expression*

NOTES

A I R 1936 P C 238, 71 M L J 525, 10 I T C 39, 1936 I T R 239) in regard to debentures and of the Bombay High Court in *Shah Mohanlal Chhotalal* v *The Commissioner of Income tax, Bombay Presidency and Aden* (10 I T C 46) in regard to reduction of capital, no longer applicable

ASSEMBLY DEBATES

Sub-section (6-*A*) *Proviso* Mr S P Chambers —Sir, as I understand it from the Honourable Member's speech, his intention is to exclude from the definition of dividend all distributions in this form which are really distributions of shares which have been issued for cash of the same value, but, the exact expression used in the proviso is not very happy because the word cash may mean of course one anna or one rupee for a large number of shares, and I feel that the original definition is such that it can only apply to a distribution of shares for full consideration * * * * I reserve the right there to make an amendment to make it quite clear that what is intended is only that shares issued for full cash consideration and not for one anna or two annas are let out

Mr Bhulabhai, J Desai —Sir I oppose this unless the words are introduced now—"full cash consideration "

Mr S P Chambers —Yes

Sub-section 6-*A*, *Explanation* —The intention is that at no time in no form should capital be taxed

Section 2, *sub-section* (6 *B*) —The inclusion of a minor admitted to the benefits of partnership in the expression "partner" obviates further reference to him in the Act *Objects and Reasons.*

OLD.	NEW.
	'partner' includes any person who being a minor has been admitted to the benefits of partnership;
	(6-C) "income" includes anything included in "dividend as defined in clause (6-A) and anything which under explanation 2 to sub-section (1) of section 7 is a profit received in lieu of salary for the purposes of that sub-section and any sum deemed to be profits under the second proviso to clause (vii) of sub-section (2) of section 10 and the profits of any business of insurance carried on by a mutual insurance company computed in accordance with Rule 9 in the Schedule;
	(6-D) "Inspecting Assistant Commissioner" means a person appointed to be an Inspecting Assistant Commissioner of Income-tax under section 5;

(7) "Income-tax Officer" means a person appointed to be an Income-tax Officer under section 5;

(8) "Magistrate" means a Presidency Magistrate or a Magistrate of the first class, or a Magistrate of the second class specially empowered by the Central Government to try offences against this Act;

OLD.	NEW.
(9) "person" includes a Hindu undivided family;	(9) "person" includes a Hindu undivided family *and a local authority;*

(10) "prescribed" means prescribed by rules made under this Act,

NOTES

Section 2, *sub sections* (3), (6 *D*) —Appellate Assistant Commissioners, and Inspecting Assistant Commissioners are defined as the result of the amendment to section 5

Section 2, *sub section* (11) —The definition of "previous year" is amended so as to—

(1) allow an assessee to have separate previous years for each separate source of income,

(2) to prevent double assessment of the same profits when the assessee exercises the option to change his "previous year" for the first time after his first year of assessment,

(3) to prevent double assessment of the same profits in the case of a newly set up business,

(4) to prescribe the "previous year" of the firm as the partner's "previous year" in respect of his share

OLD	NEW
(11) "previous year" means—	(11) "previous year" means *in respect of any separate source of income, profits and gains*—

(*a*) the twelve months ending on the 31st day of March next preceding the year for which the assessment is to be made, or, if the accounts of the assessee have been made up to a date within the said twelve months in respect of a year ending on any date other than the said 31st day of March, then at the option of the assessee the year ending on the day to which his accounts have so been made up

OLD	NEW
Provided that, if this option has once been exercised by the assessee, it shall not again be exercised so as to vary the meaning of the expression "previous year" as then applicable to such assessee except with the consent of the Income-tax Officer and upon such conditions as he may think fit; or	*Provided that where an assessee has once been assessed in respect of a particular source of income, profits and gains, he shall not in respect of that source exercise this option so as to vary the meaning of the expression 'previous year' as then applicable to him except with the consent of the Income-tax Officer and upon such conditions as the Income-tax Officer may think fit, or*
(*b*) in the case of any person, business or company or class of person, business or company, such period as may be determined by the Central Board of Revenue or by such authority as the Board may authorise in this behalf,	(*b*) in the case of any person, business or company or class of person, business or company, such period as may be determined by the Central Board of Revenue or by such authority as the Board may authorise in this behalf, *or*
	(*c*) *where a business, profession or vocation has been newly set up in the financial year preceding the year for which the assessment is to be made, the period from the date of the setting up of the business, profession or vocation to the 31st day of March next following or to the last day of the period determined under sub-clause* (*b*), *or, if the accounts of the assessee are made up to some other date than the 31st day of March, and the case is not one for which a period has been determined by the Central Board of Revenue under sub-*

OLD.	NEW
	clause (b), then, at the option of the assessee, the period from the date of the setting up of the business, profession or vocation to such other date:
	Provided that when such other date does not fall between the setting up of the business, profession or vocation and the next following 31st day of March, it shall be deemed that there is no previous year; and
	when the assessee is a partner in a firm, "previous year" in respect of his share of the income, profits and gains of the firm means the previous year as determined for the assessment of the income profits and gains of the firm.

(12) "principal officer," used with reference to a local authority or a company or any other public body or any association, means—

(a) the secretary, treasurer, manager or agent of the authority, company, body or association, or

(b) any person connected with the authority, company, body or association upon whom the Income-tax Officer has served a notice of his intention of treating him as the principal officer thereof;

(13) "public servant" has the same meaning as in the Indian Penal Code,

(14) "registered firm" means a firm registered under the provisions of section 26-A

OLD.	NEW
(15) "total income" means total amount of income, profits and gains from all sources to which this Act applies computed in the manner laid down in section 16· and	(15) "total income" means total amount of income, profits and gains *referred to in sub-section* (1) *of section* 4 computed in the manner laid down in *this Act;* and
	"total world income" includes all income, profits and gains wherever accruing or arising except income to which, under the provisions of sub-section (3) *of section 4, this Act does not apply,* and

NOTES

Section 2, sub-section (15) —The definition of "total income" is amended and the clause as amended includes a definition of "total world income" which is necessary for the purpose of assessing non-residents

(16) "unregistered firm" means a firm which is not a registered firm

CHAPTER I

CHARGE OF INCOME-TAX

OLD	NEW
3 Where any Act of the Central Legislature enacts that income-tax shall be charged for any year at any rate or rates applicable to the total income of an assessee, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of all income, profits and gains of the previous year of every individual, Hindu undivided family, company, firm and other association of individuals (Charge of Income-tax)	3 Where any Act of the Central Legislature enacts that income-tax shall be charged for any year at any rate or rates, * * * * tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of *the total income*, of the previous year of every individual, Hindu undivided family, *company and local authority, and of every firm and other association of persons or the partners of the firm or members of the association individually* (Charge of Income-tax)
4 (1) Save as hereinafter provided, this Act shall apply to all income, profits or gains, as described or comprised (Application of Act)	4 (1) *Subject to the provisions of this Act, the total income of any previous year of any person includes all income,* (Application of Act)

NOTES

Section 3 —The object of the amendment is to enable assessment to be made on individual partners of firms or on individual members of associations of persons [Section 23 (5), for example, provides for direct assessment of partners] Throughout the Act the words "association of persons" are substituted for "association of individuals" in order to cover all cases of associations of persons *Objects and Reasons*

"We have introduced a reference to "local authority" since local authorities will now be assessable to the extent to which the previously existing exemption given by clause (*iii*) of sub section (3) of section 4 of the Act is now being restricted " *Select Committee report*

Section 4 —*Application of the Act* *See* notes under section 4 *A* also

Sub-section (1) —At present under the provisions of section 4 the Act applies to income which accrues or arises or is received or is deemed to accrue or arise or be received in British India and, in addition, in the case of a resident, to income accruing or arising outside British India if received in or brought into British India The Bill enlarges the scope of the section by including—

(1) the whole of the foreign income of a person resident and domiciled in British India whether brought into British India or not,

(2) the whole of the foreign income from business, profession or vocation of a person resident but not domiciled in British India whether brought into British India or not The other foreign income of such a person remains liable only if brought into British India

These amendments follow the provisions of the United Kingdom law except in respect of the foreign income of domiciled and resident persons other than income from business, securities, stocks, shares or rents Such income in the United Kingdom is taxed on the

OLD.

in section 6, from whatever source derived, accruing or arising, or received in British India, or deemed under the provisions of this Act to accrue, or arise, or to be received in British India.

(2) Income, profits and gains accruing or arising without British India to a person resident in British India shall, if they are received in or brought into British India, be deemed to have accrued or arisen in British India and to be income, profits and gains of the year in which they are so received or brought notwithstanding the fact that they did not so accrue or arise in that year

Provided that nothing contained in this sub-section shall apply to any income, profits or gains so accruing or arising prior to the 1st day of April, 1933, unless they are income, profits or gains of a business and are received in or brought into British India within three years of the end of the year in which they accrued or arose

Provided further that nothing in this sub-section shall apply to income from agriculture arising or accruing in a State in India from land for which any annual

NEW.

profits and gains from whatever source derived which—

(a) are received or are deemed to be received in British India in such year by or on behalf of such person, or

(b) if such person is resident in British India during such year,—

(i) accrue or arise or are deemed to accrue or arise to him in British India during such year, or

(ii) accrue or arise to him without British India during such year, or

(iii) having accrued or arisen to him without British India before the beginning of such year and after the 1st day of April, 1933, are brought into or received in British India by him during such year; or

(c) if such person is not resident in British India during such year, accrue or arise or are deemed to accrue or arise to him in British India during such year:

Provided that there shall not be included in any assessment for the year ending on the 31st day of March, 1940, both the amount of the income, profits and gains referred to in sub-clause (ii)

NOTES

remittance basis whereas the Bill proposes to tax it on the accruing or arising basis The United Kingdom provisions in regard to this class of income were not followed because in practice they have given rise to difficulties

An important omission from the amended sub-section (1) is the proviso exempting income from agriculture in an Indian State " *Objects and Reasons*

Section 4 —"The first proviso newly inserted in clause (c) of proposed sub section (1) of section 4 of the Act is aimed at removing the possibility, now that in the case of residents the remittance basis of taxation is abandoned for the accrual basis, of both foreign profits which accrued in the previous year and foreign profits which were remitted in the previous year being assessed in the first year after the change

The alterations made in the second proviso merely clarify the drafting

Explanation 2 has not been altered, but the Committee records its opinion in connexion with this *Explanation* that the Central Government should approach His Majesty's Government to amend the Government of India Act, 1935, so as to make pensions payable out of Indian revenues chargeable to Indian income-tax

OLD	NEW
payment in money or in kind is made to the State.	*of clause (b) and the amount of the income, profits and gains referred to in sub-clause (iii) of clause (b) but only the greater of these two amounts*
	Provided further that, in the case of a person not ordinarily resident in British India, income, profits and gains which accrue or arise to him without British India shall not be so included unless they are derived from a business controlled in or a profession or vocation set up in India or unless they are brought into or received in British India by him during such year
	Provided further that if in any year the amount of income accruing or arising without British India exceeds the amount brought into British India in that year, there shall not be included in the assessment of the income of that year so much of such excess as does not exceed four thousand five hundred rupees
Explanation —Income, profits or gains accruing or arising	*Explanation 1 —Income, profits and gains accruing or arising*

NOTES

Explanation 3, newly inserted by us, has the effect of making liable to super tax dividends paid outside British India in so far as they are paid out of profits subjected to income-tax in British India It also makes it clear that refunds of income tax can be claimed on such dividends To the extent to which this *Explanation* enlarges the taxation imposed under the Bill we recognize that it is not covered by the sanction accorded to the Bill before introduction, and so requires sanction before it can be moved in the House

We have received an assurance that administrative arrangements can and will be made to obviate any hardship that might be imposed, in consequence of the change to the accrual basis of taxation, on persons prevented by laws in force in the country where their money may be lying from remitting money to British India as and when they wish " *Select Committee Report*

The variation in the system of assessment of foreign profits from the remittance basis into the accrual basis in the case of residents, makes the numerous decisions relating to the receipt of foreign profits hereafter inapplicable except in regard to profits which accrued outside British India from 1st April, 1933, are received in British India and have not been taxed on the accrual basis

The deletion of clause (v) of sub-section (3) does not mean that the amounts mentioned therein are liable to tax The observations of their Lordships of the Privy Council that such sums cannot be regarded as income, (59 I A 206=59 Cal 1343=63 M L J 124=1932 P C 138=6 I T C 178) hold good to the extent to which they are not otherwise made taxable by specific provisions.

OLD	NEW
without British India shall not be deemed to be received or brought into British India within the meaning of this sub-section by reason only of the fact that they are taken into account in the balance-sheet prepared in British India.	*without British India shall not be deemed to be received in or brought into British India within the meaning of this sub-section by reason only of the fact that they are taken into account in a balance-sheet prepared in British India*
	Explanation 2.—Income which would be chargeable under the head 'Salaries' if payable in British India and not being pension payable without India shall be deemed to accrue or arise in British India wherever paid if it is earned in British India
	Explanation 3.—A dividend paid without British India shall be deemed to be income accruing and arising in British India to the extent to which it has been paid out of profits subjected to income-tax in British India
	(2) *For the purposes of sub-section* (1), *where a husband is not resident in British India, remittances received by his wife resident in British India out of any part of his income which is not included in his total income shall be deemed to be income accruing in British India to the wife*
(3) This Act shall not apply to the following classes of income —	(3) *Any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them —*

NOTES

Explanation 2.—Judicial decisions on the question of the liability to tax of income from "salaries" make it necessary to make the earning of the salary in British India the basis of the liability. Only pensions payable without India are excluded.

Sub section (2) makes taxable the remittances made by a non-resident husband to a resident wife.

Sub section (3)—*Exemptions*—

Clause (*i a*).—The exemptions in the Act at present do not in terms apply to income from business carried on by religious or charitable institutions though in practice such exemption is given. This amendment gives legal authority for the practice but

(i) Any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, and in the case of property so held in part only for such purposes, the income applied, or finally set apart for application, thereto

OLD	NEW
	(i-a) *Any income derived from business carried on on behalf of a religious or charitable institution when the income is applied solely to the purposes of the institution and—* (a) *the business is carried on in the course of the carrying out of a primary purpose of the institution, or* (b) *the work in connection with the business is mainly carried on by beneficiaries of the institution*

(ii) Any income of a religious or charitable institution derived from voluntary contributions and applicable solely to religious or charitable purposes

OLD	NEW
(iii) The income of local authorities	(iii) The income of local authorities *except income from a trade or business carried on by the authority so far as that income is not income arising from the supply of a commodity or service within its own jurisdictional area*
(iv) Interest on securities which are held by, or are the property of, any Provident Fund to which the Provident Funds Act, 1897, applies	(iv) Interest on securities which are held by, or are the property of, any Provident Fund to which the Provident Funds Act, 1925, applies
(v) Any capital sum received in commutation of the whole or a	(v) *Omitted*

NOTES

confines the exemption to cases where the business activities are in themselves a primary purpose of the institution or the work in connection with the business is mainly carried on by the beneficiaries

Clause (iii) —At present all income of local authorities is exempted If a local authority makes profits from supplying a commodity or service outside its jurisdiction it is considered that exemption should not be given to those profits and this amendment gives effect to that view

Sub section (v) —The Privy Council in *Shaw Wallace case*—6 I T C 178) has ruled that capital sums received in commutation of pension or as consolidated compensation for death or injuries or in payment of an insurance policy or as the accumulated balance from a Government Provident Fund could not in any scheme of taxation be regarded as

OLD.	NEW
portion of a pension, or in the nature of consolidated compensation for death or injuries, or in payment of any insurance policy, or as the accumulated balance at the credit of a subscriber to any such Provident Fund	

(vi) Any special allowance, benefit or perquisite specifically granted to meet expenses wholly and necessarily incurred in the performance of the duties of an office or employment of profit

(vii) Any receipts not being receipts arising from business or the exercise of a profession, vocation or occupation, which are of a casual and non-recurring nature, or are not by way of addition to the remuneration of an employee

(viii) Agricultural income

(ix) Any income received by trustees on behalf of a recognised provident fund as defined in clause (a) of section 58-A

OLD.	NEW
In this sub-section "charitable purpose" includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility	In this sub-section "charitable purpose" includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility, *but nothing contained in clause (i), clause (i-a) or clause (ii) shall operate to exempt from the provisions of this Act that part of the income of a private religious trust which does not enure for the benefit of the public*
	Residence in British India **4-A** *For the purposes of this Act—*

NOTES

income Specific exemption therefore is superfluous and the provision is deleted

The amendment added at the end of sub section (3) is designed to prevent the abuse of the exemption given to the income of religious trusts It prescribes that the exemption shall not be given to income of a private religious trust which does not enure to the benefit of the public

NEW SECTION 4 A —"Owing to the enlargement of the scope of section 4 of the Act by Clause 4 of the Bill, residence and domicile have to be defined for certain cases and they are defined here *Objects and Reasons*

Section 4 A —The change made in the drafting of clause (*a*) of proposed section 4 *A* of the Act adopts the wording suggested in the Income tax Enquiry Report, 1936, which is based on draft clause 6 of the draft Income tax Bill appended to the report of the United Kingdom Income tax Codification Committee presented to Parliament in April 1936 The change in clause (*b*) of the section merely omits the word "central " *Select Committee Report*

OLD	NEW
	(a) any individual is resident in British India in any year if he—
	(i) is in British India in that year for a period amounting in all to one hundred and eighty-two days or more; or

NOTES

The distinction between "domicile" and "non-domicile" is removed and replaced by distinction between "Resident" and "not ordinarily resident"

Sections 4 (1), 4-A and 4 B proved the most important and contentious provisions in the Amending Bill and at one time the entire fate of the Bill depended on these provisions. The sections as finally passed are the result of compromise

The Changes in the Assembly are as regards three important matters—

(a) Omitting the distinction between domicile and non domicile and introducing, instead the distinction between resident and not ordinarily resident,

(b) Change in the definition of residence regarding companies,

(c) Exemption of Rs 4,500 from tax in regard to foreign income not remitted to British India

The object and scope of the change will appear from the following extracts from the

ASSEMBLY DEBATES

Mr Bhulabhai J Desai —"* * * All I say is this that what we wanted was that those who reside here, without technically changing their domicile long enough and with sufficient continuity, ought not to get away with a plea that none the less their domicile is some part of England That is the real point at issue * * * All I want to convey is that these two words "resident" and "ordinarily resident" are merely technical expressions by means of which you intend to represent all the qualifications of one as distinguished from the other That is the only purpose of it But it serves one important purpose from the point of view of the objective which I had, namely, it gets rid of the issue of domicile of origin, as the constitutional law would have it The domicile of origin is England at his birth although he may remain here for fifty years He is still able to say, during the interval and even after his death, that his domicile still remains in England That was the main purpose that I had in view

Ultimately we began to realise that some method must be found in order to be able to attract for the purpose of taxation within the scope of the Act, such companies which technically, that is in a legal sense, might be resident, that is might be registered, but whose central control is in the United Kingdom, but the bulk of whose business—and in this case 51 per cent of their profits of the year—is here After all, you can only draw a line somewhere and we had to draw a line, and the line that we have drawn is that any company, whatever its place of registration, whatever its place of central control, whose world profits in the proportion of 51 per cent in any year are made in this country, will come within the scope of the Act and will have to pay the tax accordingly Therefore shortly stated, what we attempted to do was this, without attempting to be technical Firstly, that we should abolish all distinction between domicile and non-domicile and thereby everybody, who made his fortune here in a substantial sense and remained here and continued to be so should be protected That applies to individuals As regards the companies, as I have already stated, we judged that not so much by central control or even by its place of registration, as by the fact that the bulk of its fortune was being made from year to year here

* * * *

When you come to the small trader, as I call him, the amendments will clearly show that any trader who is not ordinarily resident at all, does not come within the scope of the Act at all That is the man who has left India and who is away in, say, Africa all the time and who has been many years away, who has not even perhaps a dwelling house or even a thatched roof in a village For such a man the Act does not provide * * *

OLD	NEW
	(ii) maintains or has maintained for him a dwelling place in

NOTES

Then as regards resident Indians we have taken a further step and my honourable friend Mr. Jinnah insisted upon that point more than once that our social habits and our ways are different Notwithstanding the fact that we may be in foreign countries, we come back here for observance of ceremonies including death, marriage, etc , and therefore we have provided that a man would not become ordinarily resident even though roughly, I am talking of the average case it is 21 months in seven years and that is a little more than three months every year, the man comes to India and resides The man is a non resident and does not come within the provisions of this Act Though he resides every year for three months in India, he is not within the Act

* * * *

Then comes the man who operates from India with business here and elsewhere It is that man who has been talking loudly It is that man undoubtedly whom we want to catch

* * * * *

On the top of that we have further, at all events, as part of the agreement provided that a sum of Rs 4,500 in addition to the exhibited income in India should be made tax free Supposing a man has income both in India and foreign countries, then out of his slab of foreign income for the purpose of calculating the tax, a sum of Rs 4,500 would be deducted In other words a man up to the time he makes an additional income of Rs 400 a month in foreign income, is not taxed

Mr A Aikman —The amendment before the House alters the second proviso to clause 4 It removes the old distinction between domicile and non domicile and replaces it with the distinction between residents on the one hand and those who are not ordinarily resident on the other hand that is to say, all persons who normally reside and work in this country will, in the matter of taxation, be treated on the same footing

The Honourable Sir James Grigg —Sir I will do my best to solve conundrums In the first place, we were trying to cover rather compendiously two entirely different classes of cases, firstly the European official or the trader for that matter in the early years of his stay in India before it has become established that his career is in India The other is the case of the Indian trader abroad who has an ancestral home in India to visit irregularly but possibly enough to become technically resident in every year The conditions to be satisfied are cumulative, that is a man has to be resident in nine out of ten years preceding the year of assessment Now that means that there are three ways in which a man can become resident He can become resident by being in the country for six months, he can become resident if he has got a house in the country and comes here for one day, he can become resident in a year if he is here for a day, if he has been here before that year for one year out of four i e , a regular visit of about three months a year Any one of these definitions of "resident" or one or other of these definitions of "resident" has got to be satisfied in nine out of ten years Then you come to the second wing, to the case where a man becomes a resident technically in every one of the ten years although his visits are very short and he becomes resident in the main in fact entirely, because he keeps an ancestral house in British India, and therefore unless he is in India for a substantial period over seven years he is to be regarded as not ordinarily resident That was the objective which the Leader of the Muslim League party had, that is, to cut out the Indian trader whose connection with India had become rather attenuated and only existed at all because he had an ancestral house and came back to it at odd intervals for short periods So that a man is not ordinarily resident unless he satisfies both of those conditions and both of those conditions amount to saying that he must have been resident in nine out of ten years and he must have been here for substantial periods in the preceding seven years And those are the criteria we have invented to cover two different types of cases There are two cases in which a man may become resident by being in India for a single day for a tax year The first is that he has got a furnished house and he occupies it and the second is, if he has been a regular visitor for substantial periods for four years preceding that year, and the criterion for that is that he has been here for one year in the preceding four And in both cases a man can technically become resident

OLD	NEW
	British India for a period or periods amounting in all to one

NOTES

by being in the country for one single day And you cannot exclude the rather absurd extreme case where a man has been here for (say) one day in nine years out of the preceding ten and becomes ordinarily resident by that criteria alone And that was the objective which not only Mr Jinnah, but the Leader of the Congress Party had in mind, to cut out the person whose connection with India had become so attenuated as to be non-existent

Mr S Satyamurti —Are these accumulative or alternative conditions?

The Honourable Sir James Grigg —They are accumulative * * * The reason why it was put in the form of an accumulation of negatives is that it was discussed at great length and I think the general consensus of opinion was that in order to get an accumulation of conditions only using positives it will be necessary to complicate the provisions and that this was a more compendious way of doing it * * *

COUNCIL OF STATE—DEBATES

The Hon. Mr S P Chambers —Under the Bill as it now comes to this Council, tax payers are divided into three classes First, there are the non-residents They pay tax only on the income which arises in British India Then there are the persons who are resident but not ordinarily resident They pay tax on the amounts which arise in India plus the amount of their foreign income which they bring into British India And then, finally, there are those who are both resident and ordinarily resident I will come to the way in which these classes are defined in a moment But this last class pay tax on the income which arises in India, on the amounts they bring to India and also on the amounts which arise abroad and which have not been brought into India, with a deduction from this last class of income of Rs 4,500 So much for the incidence of taxation between these three classes I think the chief trouble has arisen not so much in understanding that but in understanding the differences made between the classes, the manner in which the different classes have been defined This matter is dealt with * * * in sections 4 A and 4 B Now under the new section 4 A a person is resident in British India if he satisfies one of the three conditions First of all he has to be resident in British India (or rather actually in British India) for at least half the year That is one condition Secondly, if he has a house in British India maintained for at least half a year and visits the country for any time during the year, however small the period may be he may be here only two or three days, he would then be regarded as a resident And thirdly, if in the preceding four years he has been in British India for at least 365 days, he will be regarded as resident Now that differentiates residents from non-residents We will have to keep those three conditions entirely separate from the conditions which are dealt with in the second section, section 4 B, which defines persons who are ordinarily resident Now under 4 B a person in order to be ordinarily resident must have been a resident as defined in 4 A for at least nine out of the ten preceding years and must also have been in British India for at least 730 days (that is to say two years), in the previous seven years Both these conditions have to be satisfied If I give one or two illustrations, perhaps it might make the thing clearer First of all, let us take the case of a Sindhi merchant, I mention the Sindhi merchant because that is a class affected, who maintains a house in British India, trades abroad and comes back regularly every year He will clearly be a resident of British India, but unless he has also been for 730 days out of the past seven years in British India he will not be also ordinarily resident He would just be treated as a person resident but not ordinarily resident, and will pay tax on the income in British India plus the income arising abroad which has been remitted to British India Then, if you take the case of a European member of the Indian Civil Service who has been here for eight years, he will be regarded as not ordinarily resident because quite clearly he has not been resident in British India for nine out of the previous ten years But his colleague, also a European member who has been here 12 years, and has only had short periods of leave, eight or nine months at a time will be regarded both as resident and ordinarily resident In order to escape a person who has been resident here for more than ten years will have to be out of the country for the whole of two complete income-tax years, otherwise the condition of ordinary residence will apply to him

OLD	NEW
	hundred and eighty-two days or more in that year, and is in British India for any time in that year, or
	(iii) having within the four years preceding that year been in British India for a period of or for periods amounting in all to three hundred and sixty-five days or more, is in British India for any time in that year otherwise than on an occasional or casual visit,
	(b) a Hindu undivided family firm or other association of persons is resident in British India unless the control and management of its affairs is situated wholly without British India, and
	(c) a company is resident in British India in any year (a) if the control and management of its affairs is situated wholly in British India in that year, or (b) if its income arising in British India in that year exceeds its income arising without British India in that year
	Ordinary residence — **4 B** *For the purposes of this Act—*

NOTES

So far I have been dealing with the question of residence in its relation to individuals, but an important change has been made in defining what we mean by a company resident in British India In the past a company was regarded as resident in British India unless its control and management was situated wholly outside the country The Bill adds another condition and says that a company shall be regarded as resident if its control and management is here or if more than half its income arises here That is a change which has been made in the Assembly and the effect of that is to bring within the scope of the Act those companies which have most of their trading activities in India but which have their technical control in the United Kingdom By technical control I mean control as it has been interpreted in the Courts, the control of the Board of Directors if the power of control is vested in that Board If those meetings are all held in London, then, notwithstanding the existence in India of large buildings and most of their business here, then technically that company will be regarded as resident in the United Kingdom and not resident in India These companies paid in the past on the income arising here, but they did not pay on the income arising abroad, the United Kingdom or elsewhere That is rather an important change Fortunately for a company "ordinary residence" is the same as "residence" So there is no further complication here"

Section 4 B —*See* notes under section 4-A

OLD.	NEW
	(a) *an individual is 'not ordinarily resident' in British India in any year if he has not been resident in British India in nine out of the ten years preceding that year or if he has not during the seven years preceding that year been in British India for a period of, or for periods amounting in all to, more than two years,*
	(b) *a Hindu undivided family is deemed to be ordinarily resident in British India if its manager is ordinarily resident in British India,*
	(c) *a company, firm or other association of persons is ordinarily resident in British India if it is resident in British India*

CHAPTER II

INCOME-TAX AUTHORITIES

OLD.	NEW
5 (1) There shall be the following classes of Income-tax authorities for the purposes of this Act, namely — (Income-tax authorities)	5 (1) *There shall be the following classes of Income-tax authorities for the purposes of this Act, namely —* (Income-tax authorities)

NOTES

"SECTION 5 deals with Income tax authorities It has been decided to divide Assistant Commissioners of Income tax into Appellate Assistant Commissioners and Inspecting Assistant Commissioners and to place the former under the control of the Central Board of Revenue *Objects and Reasons* "

Section 5 —The addition made to sub-section (2) of section 5 of the Act is intended to make possible the establishment at a central or headquarters station under the Central Board of Revenue of special branches for work of special difficulty or importance The change made in sub section (7) is consequential on the provision made in sub section (2) for the existence of Commissioners of Income tax whose jurisdiction is not defined by areas The new sub section (8) inserts a provision contained in the English law explicitly asserting the controlling power of the superior Revenue Authority over its officers

Provision originally made in the Bill for appointment of Income tax Inspectors who are to have powers to enter premises of assessees to make enquiries, examine books, etc , has been omitted by the Assembly as a result of strong opposition

COUNCIL OF STATE-DEBATES

The Hon Mr S P Chambers —"Then clause 5 also provides for the setting up of a headquarters staff In regard to this I might say that there is in India at present no staff at headquarters comparable to the technical staff at Somerset House which controls and advises the whole of the income-tax staff throughout the United Kingdom The object in having such a staff, first of all, is to impose a more thorough check upon the imposition of penalties The Bill provides, as I have already mentioned, for much larger penalties and penalties which may extend back to eight years Well, it is felt that responsibility for imposing such penalties, which can of course be very large in some cases, should

OLD.	NEW
(*a*) the Central Board of Revenue,	(a) *the Central Board of Revenue,*
(*b*) Commissioners of Income-tax,	(b) *Commissioners of Income-tax,*
(*c*) Assistant Commissioners of Income-tax, and	(c) *Assistant Commissioners of Income-tax who may be either Appellate Assistant Commissioners of Income-tax or Inspecting Assistant Commissioners of Income-tax,*
(*d*) Income-tax Officers	(d) *Income-tax Officers*
(2)* * * * *	
(3) The Central Government may appoint a Commissioner of Income-tax for any area specified in the order of appointment	(2) *The Central Government may appoint a Commissioner of Income-tax for any area specified in the order of appointment, and may appoint Commissioners of Income-tax, not more than three in all, each to discharge, without reference to area, and to the exclusion of any Commissioner appointed for any area, the functions of a Commissioner in respect of any cases or classes of cases assigned to him by the Central Board of Revenue*
(4) The Central Government may appoint for any area as many Assistant Commissioners of Income-tax and Income-tax Officers as it thinks fit They shall perform their functions in respect of such persons or classes of per-	(3) *The Central Government may appoint for any area as many Appellate or Inspecting Assistant Commissioners of Income-tax and Income-tax Officers as it thinks fit*
	(4) *Appellate Assistant Com-*

NOTES

not rest entirely on the local officer, but there should be some system of centrally controlling penalties So some officers are required to "vet" penalties throughout the country Then there are some assessments which we have found have been rather badly handled, not because the officer is necessarily unintelligent or lazy but because he lacks the necessary technical equipment In the United Kingdom such matters as the assessment of insurance companies, banks and large financial houses are dealt with, mainly dealt with in one place only—London But there is at hand some one or two persons at Somerset House who are really experts in these difficult matters, and in that way the assessments on those large cases have been dealt with more effectively and more efficiently in the United Kingdom than they have been here But the fault does not lie so much with the Officers as with the system in India which does not provide for specialists, and it is hoped that by having one or two persons here for this purpose the Government will not lose large sums of money through ignorance or inefficiency "

OLD.

sons and of such incomes or classes of income and in respect of such areas as the Commissioner of Income-tax may direct and, where two or more Assistant Commissioners of Income-tax or Income-tax Officers have been appointed for the same area, in accordance with any orders which the Commissioner of Income-tax may make for the distribution and allocation of the work to be performed The Commissioner may, by general or special order in writing, direct that the powers conferred on the Income-tax Officer and the Assistant Commissioner by or under this Act shall, in respect of any specified case or class of cases, be exercised by the Assistant Commissioner and the Commissioner, respectively, and, for the purposes of any case in respect of which such order applies, references in this Act or in any rules made hereunder to the Income-tax Officer and the Assistant Commissioner shall be deemed to be references to the Assistant Commissioner and the Commissioner, respectively

NEW.

missioners of Income-tax shall be under the direct control of the Central Board of Revenue and shall perform their functions in respect of such persons or classes of persons and of such incomes or classes of income and in respect of such areas as the Central Board of Revenue may direct, and, where two or more Appellate Assistant Commissioners have been appointed for the same area, in accordance with any orders which the Central Board of Revenue may make for the distribution and allocation of the work to be performed

(5) *Inspecting Assistant Commissioners of Income-tax and Income-tax Officers shall perform their functions in respect of such persons or classes of persons and of such incomes or classes of income and in respect of such areas as the Commissioner of Income-tax may direct, and, where two or more Inspecting Assistant Commissioners of Income-tax or Incometax Officers have been appointed for the same area, in accordance with any orders which the Commissioner of Income-tax*

OLD	NEW.
	may make for the distribution and allocation of the work to be performed The Commissioner may, with the previous approval of the Central Board of Revenue, by general or special order in writing, direct that the powers conferred on the Income-tax Officer and the Appellate Assistant Commissioner by or under this Act shall, in respect of any specified case or class of cases, be exercised by the Inspecting Assistant Commissioner and the Commissioner, respectively, and, for the purposes of any case in respect of which such order applies, references in this Act or in any rules made hereunder to the Income-tax Officer and the Appellate Assistant Commissioner shall be deemed to be references to the Inspecting Assistant Commissioner and the Commissioner, respectively
(5) The Central Board of Revenue may, by notification in the Official Gazette, appoint Commissioners of Income-tax, Assistant Commissioners of Income-tax and Income-tax Officers to perform such functions in respect of such classes of persons or such classes of income, and for such area, as may be specified in the notification, and thereupon the functions so specified shall cease, within the specified area, to be performed, in respect of the specified classes of persons or classes of income, by the authorities appointed under sub-sections (3) and (4)	(6) *The Central Board of Revenue may, by notification in the Official Gazette, empower Commissioners of Income-tax, Appellate or Inspecting Assistant Commissioners of Income-tax and Income-tax Officers to perform such functions in respect of such classes of persons or such classes of income and for such area as may be specified in the notification, and thereupon the functions so specified shall cease within the specified area to be performed in respect of the specified classes of persons or classes of income by the other authorities appointed under sub-sections* (2) *and* (3)
(6) Assistant Commissioners of Income-tax, and Income-tax	(7) *Assistant Commissioners of Income-tax and Income-tax*

OLD	NEW
Officers appointed under sub-section (4) shall, for the purposes of this Act, be subordinate to the Commissioner of Income-tax appointed under sub-section (3) for the area in which they perform their functions	*Officers shall, for the purposes of this Act, be subordinate to the Commissioner of Income-tax for the area in which they perform their functions, or where they perform functions assigned to them by a Commissioner of Income-tax appointed without reference to area, to that Commissioner*
	(8) *All officers and persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Central Board of Revenue*
	Provided that no such orders, instructions or directions shall be given so as to interfere with the discretion of the Appellate Assistant Commissioner in the exercise of his appellate functions
	*5-A (1) *The Central Government shall appoint an Appellate Tribunal consisting of not more than ten persons to exercise the functions conferred on the Appellate Tribunal by this Act*
	The Appellate Tribunal
	(2) *The Appellate Tribunal shall consist of an equal number of judicial members and accountant members as hereinafter defined*

NOTES

**See notes under section* 1 —Section 5 A will come into operation on a date to be notified later but within two years from 1st April 1939

COUNCIL OF STATE-DEBATES

The Hon Mr S P Chambers —Then, in the machinery side, we have of course a very important change, an Appellate Tribunal is proposed, and that is dealt with in Part II of the Bill The reason for putting this in a separate Part of the Bill, even though the amendments are spread throughout the Act, is that it would impose too heavy a burden upon the Department to have such a radical change made at a time when so many other changes were being made both in the organisation of the Department and the incidence of the tax For that reason the provisions are put into Part II of the Bill and

OLD.	NEW
	(3) *A judicial member shall be a person who has exercised the powers of a District Judge or who possesses such qualifications as are normally required for appointment to the post of District Judge, and an accountant member shall be a person who has, for a period of not less than six years, practised professionally as a Registered Accountant enrolled*

NOTES

the intention is that they shall come into force two years after the Bill itself comes into force Now the main lines of the proposal were settled in Select Committee and they were these First of all, a Tribunal was to be set up consisting of not more than ten persons half of whom would be judicial members, that is to say, persons of approximately the status of a District Judge—no less status than that—and half of them were to be what has been described as accountancy members, that is to say, persons with experience in accountancy matters and business matters generally The intention is to have appeals heard by Benches of two members drawn from the Tribunal which would be a kind of panel and one judicial member would sit with one accountancy member, so that when a case came up which dealt with difficult points of accountancy or of business generally the experience and knowledge of the accountancy member would be available, while of course on points of law there would be the experience and learning of the judicial member Provision is made for referring to the President of the Tribunal of any case in which there is a difference between two members hearing an appeal and the President can then refer the matter to other members and take a majority decision The precise rules for determining the manner in which that should be done have not been laid down they have been left for the President to make himself Now one big difficulty which was feared when these proposals were first mooted was that there will be hundreds and thousands of appeals, some of them very small, which would go from the Assistant Commissioner to the Appellate Tribunal I may say at this state that the various Benches should sit at the same time in different parts of India, so that one will be sitting in Bombay, one in Calcutta and perhaps another in Madras Thus, in various parts of the country these groups of two would be hearing appeals at the same time It was felt that the Tribunal would be flooded out by these appeals and that something must be done to prevent that, otherwise the increase in the number of members necessary to hear the appeals would be so great as to make the scheme altogether too costly To get over that, the proposal is to provide for a fee of Rs 100 for every appeal taken to the Tribunal The assessee continues, of course, to have the right without any cost of going to the Assistant Commissioner, who in future will do nothing but hear the appeals and it is expected that he will be able to do substantial justice in all ordinary simple cases That will mean that only those cases in which a very large point of substance or a very difficult point of law arises will, in fact, go to the Appellate Tribunal That corresponds very largely, almost exactly, to the system of the Special Commissioners in the United Kingdom There, the Special Commissioners are a full time body as here and they go on tours in twos all over the country and it is a practice for only fairly large and important cases to reach that stage I think I have explained everything that need be explained on that Tribunal except possibly this that the Tribunal will not in any sense be under the control of the Commissioner as it is going to be an entirely separate judicial body and for that reason the right is given to the Income-tax Officer himself to lodge an appeal against the decision of either the present Assistant Commissioner or the Appellate Tribunal His appeal against the Appellate Assistant Commissioner's decision would, of course, be on the instructions of his Commissioner on Income-tax and would follow the same course as that of an appeal by an assessee The further stages will, of course, be nothing more than the reference to the High Court on a point of law in the same way as a point of law can now be referred by the Commissioner to the High Court

OLD.	NEW
	on the Register of Accountants maintained by the Central Government under the Auditors Certificate Rules, 1932:
	Provided that the Central Government may appoint as an accountant member of the Tribunal any person not possessing the qualifications required by this sub-section, if it is satisfied that he has qualifications and has had adequate experience of a character which render him suitable for appointment to the Tribunal
	(4) *The Central Government shall appoint a judicial member of the Tribunal to be president thereof*
	(5) *The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted from members of the Tribunal by the president of the Tribunal*
	(6) *A Bench shall consist of not less than two members of the Tribunal, and shall be constituted so as to contain an equal number of judicial members and accountant members, or so that the number of members of one class does not exceed the number of members of the other class by more than one*
	(7) *If the members of a Bench differ in opinion on any point the point shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the president of the Tribunal for hearing on such point or points*

OLD.	NEW
	by one or more of the other members of the Tribunal, and such point or points shall be decided according to the opinion of the majority of the members of the Tribunal who have heard the case, including those who first heard it
	(8) *Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure, and the procedure of Benches of the Tribunal in all matters arising out of the discharge of its functions, including the place at which the Benches shall hold their sittings*

CHAPTER III

TAXABLE INCOME

OLD.	NEW
6 Save as otherwise provided by this Act, the following heads of income, profits and gains, shall be chargeable to income-tax in the manner hereinafter appearing, namely :— (Heads of income chargeable to income tax)	6 Save as otherwise provided by this Act, the following heads of income, profits and gains, shall be chargeable to income tax in the manner hereinafter appearing, namely :— (Heads of income chargeable to income tax.)
(i) Salaries	(i) Salaries
(ii) Interest on securities	(ii) Interest on securities
(iii) Property	(iii) *Income from property*
(iv) Business	(iv) *Profits and gains of business, profession or vocation*
(v) Professional earnings	(v) *Income from other sources*
(vi) Other sources	
7 (1) The tax shall be payable by an assessee under the head "Salaries" in respect of any (Salaries)	7 (1) The tax shall be payable by an assessee under the head "Salaries" in respect of any (Salaries)

NOTES

Section 6 specifies six heads of chargeable income They are now reduced to five owing to the amalgamation of sections 10 (business) and 11 (profession or vocation) For the sake of consistency some verbal alterations have been made in the classification

Section 7 which deals with income under the head "Salaries" is here amended so as to make sums due under that head liable on the date when they are due whether paid or not Advances and loans of such income are deemed to be salary due on the date when

OLD	NEW
salary or wages, any annuity, pension or gratuity, and any fees, commissions, perquisites or profits received by him in lieu of, or in addition to, any salary or wages, which are paid by or on behalf of the Crown, a local authority, a company, or any other public body or association, or by or on behalf of any private employer	salary or wages, any annuity, pension or gratuity, and any fees, commissions, perquisites or profits * * * in lieu of, or in addition to, any salary or wages, *which are due to him from, whether paid or not, or are paid by or on behalf of, the Crown,* a local authority, a company, or any other public body or association, or *any private employer, and for the purposes of this sub-section advances by way of loan or otherwise of income chargeable under this head shall be deemed to be salary due on the date when the advance is received*
	Provided that the tax shall not be payable in respect of any sum which the assessee by the conditions of his employment is required to spend out of his remuneration wholly, necessarily and exclusively in the performance of his duties
Provided that the tax shall not be payable in respect of any sum deducted from the salary payable by or on behalf of the Crown to any individual, being a sum deducted in accordance with the conditions of his service, for the purpose of securing to him a deferred annuity or of making	Provided *further* that the tax shall not be payable in respect of any sum deducted from the salary payable by or on behalf of the Crown to any individual, being a sum deducted in accordance with the conditions of his service, for the purpose of securing to him a deferred annuity or of making pro-

NOTES

received The object of this amendment is to defeat evasion by postponing drawal of salary or by taking advances or loans

The object of the third proviso to section 7 (1) is that where tax is not deducted by an employer, unless the assessee receives the salary without deduction he should not be called upon personally to pay the tax Under a new chapter introduced in the Assembly Chapter IX B super annuation funds which are approved are dealt with in a way similar to Recognised Provident Funds in regard to certain exemptions

Explanation 2 read with the definition of "income" in section 2 (6 *c*) nullifies for the future in respect of the payments with which it deals the effect of the Privy Council decision in the *Shaw Wallace case,* (6 I T C 178) [Note on page 12—section 4 (3) (*v*) may be referred to] To mitigate the hardship that would be caused by assessing accumulated payments of this kind at the rate applicable to the total income of the year of receipt an amendment is made in section 60 (2)

OLD.	NEW
provision for his wife or children, provided that the sum so deducted shall not exceed one-sixth of the salary	vision for his wife or children, provided that the sum so deducted shall not exceed one-sixth of the salary:
	Provided further that where tax is deductible at the source under section 18, the assessee shall not be called upon to pay the tax himself unless he has received the salary without such deduction
Explanation —The right of a person to occupy free of rent as a place of residence any premises provided by his employer is a perquisite for the purposes of this sub-section	*Explanation* 1 —The right of a person to occupy free of rent as a place of residence any premises provided by his employer is a perquisite for the purposes of this sub-section
	Explanation 2 —A payment due to or received by an assessee from an employer or former employer or from a provident or other fund at or in connection with the termination of his employment, whether or not the employment is then terminated or to be terminated, is to the extent to which it does not consist of contributions by the assessee or interest on such contributions a profit received in lieu of salary for the purposes of this sub-section, unless the payment is made solely as compensation for loss of employment and not by way of remuneration for past services
	Provided that nothing herein contained shall render liable to income-tax any payment from a provident fund to which the Provident Funds Act, 1925, *applies*

NOTES

Some apprehension was expressed that under section 7 of the Act as now amended, an employee might find himself called on to pay income-tax on salary which was not and never would be paid to him We have received an assurance that administrative action can and will be taken to obviate any such hardship —*Select Committee Report*

Explanation 2 also nullifies the effect of the judgment of the Privy Council in *Commissioner of Income tax* v *Fletcher*, (64 I A 323, A I R 1937 P C 262, 1937 I T R 428)

OLD	NEW.
	or any payment from a recognised Provident Fund within the meaning of Chapter IX-A if such payment is exempted from payment of income-tax under the provisions of Chapter IX-A, or any payment from an approved superannuation fund within the meaning of Chapter IX-B made on the death of a beneficiary or in lieu of or in commutation of an annuity, or by way of refund of contributions on the death of a beneficiary or on his leaving the employment in connection with which the fund is established

(2) Any income which would be chargeable under this head if paid in British India shall be deemed to be so chargeable if paid to a British subject or any servant of His Majesty in any part of India by or on behalf of the Crown or by a local authority established in the exercise of the powers of the Crown Representative or the Central Government in that behalf

8 The tax shall be payable by an assessee under the head "Interest on securities" in respect of the interest receivable by him on any security of the Central Government or of a Provincial Government, or on debentures or other securities for money issued by or on behalf of a local authority or a company·

Interest on securities

OLD	NEW.
Provided that no income-tax shall be payable under this section by the assessee in respect of any sum deducted from such interest by way of commission by a banker realizing such interest on behalf of the assessee	Provided that no income-tax shall be payable under this section by the assessee in respect of any sum deducted from such interest by way of commission by a banker realizing such interest on behalf of the assessee *or in respect of any interest payable on money borrowed for the purpose of investment in the securities by the assessee except interest chargeable under this Act which is payable without British India, not being interest on a loan issued for public subscription before the 1st day of*

NOTES

Section 8 —The amendment merely recognises an existing practice but restricts the exemption to payments of interest which are chargeable to tax in British India only if tax has been deducted before payment

OLD	NEW
	April 1938, unless in respect of interest which is so chargeable tax has been paid or deducted under section 18, or unless there is a person in British India who may be appointed an agent under section 43 in respect of such interest:

Provided further that no income-tax shall be payable on the interest receivable on any security of the Central Government issued or declared to be income-tax free

Provided further that the income-tax payable on the interest receivable on any security of a Provincial Government issued income-tax free shall be payable by that Provincial Government

OLD	NEW
9 (1) The tax shall be payable by an assessee under the head "Property" in respect of the *bona fide* annual value of property consisting of any buildings or lands appurtenant thereto of which he is the owner, other than such portions of such property as he may occupy for the purposes of his business, subject to the following allowances, namely:—	9 (1) The tax shall be payable by an assessee *under the head "Income from Property"* in respect of the *bona fide* annual value of property consisting of any buildings or lands appurtenant thereto of which he is the owner, other than such portions of such property as he may occupy for the purposes of *any business, profession or vocation carried on by him the profits of which are assessable to tax*, subject to the following allowances, namely —
Property	Property.

(i) where the property is in the occupation of the owner, or where it is let to a tenant and the owner has undertaken to bear the cost of repairs, a sum equal to one-sixth of such value;

(ii) where the property is in the occupation of a tenant who has undertaken to bear the cost of repairs, the difference between such value and the rent paid by the tenant up to but not exceeding one-sixth of such value,

(iii) the amount of any annual premium paid to insure the property against risk of damage or destruction,

OLD	NEW
(iv) where the property is subject to a mortgage, or other capital charge, the amount of any interest on such mortgage or	(iv) *where the property is subject to a mortgage or other capital charge, the amount of any interest on such mortgage or*

NOTES

Section 9 Sub section (1) —The exemption given to property occupied for business purposes is restricted to property occupied for the purpose of an assessable business, profession or vocation

OLD	NEW
charge, where the property is subject to a groundrent, the amount of such groundrent, and where the property has been acquired with borrowed capital, the amount of any interest payable on such capital and not specifically charged upon the property itself;	*charge, where the property is subject to an annual charge not being a capital charge, the amount of such charge, where the property is subject to a groundrent, the amount of such groundrent, and where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital* *Provided that no allowance shall be made in respect of any interest or annual charge payable without British India and chargeable under this Act, not being interest on a loan issued for public subscription before the* 1st *day of April,* 1938, *except interest or a charge on which tax has been paid or from which tax has been deducted under section* 18 *or in respect of which there is an agent for the payee in British India who may be assessed under section* 43:

(*v*) any sums paid on account of land revenue in respect of the property,

(*vi*) in respect of collection charges, a sum not exceeding the prescribed maximum,

NOTES

Sub section (1) (*iv*) —At present interest on any capital charge on the property is allowed even though the capital was borrowed for private purposes and interest on capital borrowed for the purpose of acquiring the property is allowed even though there is no charge on the property The amended clause (*iv*) further allows—what is not now allowed —an annual charge not being a capital charge to which the property is subject

In order to secure that tax shall be collected on such interest or charges payable outside British India it is provided that no allowance shall be made in respect of them unless tax has been deducted therefrom There is a similar provision in section 8, section 10 and section 12 Interest on a public loan issued before 1st April 1938, is excepted

The proviso to sub section (1) which restricts the allowances in respect of property to the amount of the annual value is deleted As a result a loss on property will be allowed and can be set off against other income under section 24

"In clause (*ii*) of sub section (1) of section 9 as re drafted by the Bill, we have removed the words "was at the time of its acquisition by the assessee," in both places where they occur, and substituted the word "is" The effect is to secure, as the Act does at present, that the allowance is claimable no matter when and for what purpose the mortgage or charge arises The words inserted in the proviso to that clause are intended to make it clear that the payment of tax referred to is not confined merely to cases in which payment has been made by deduction under section 18 The alteration

OLD	NEW
(*iii*) in respect of vacancies, such sum as the Income-tax Officer may determine having regard to the circumstances of the case:	(*iii*) *in respect of vacancies that part of the net annual value after deducting the foregoing allowances, which is proportional to the period during which the property is wholly unoccupied or where the property is let out in parts, that portion of the net annual value, after deducting the foregoing allowances appropriate to any vacant part which is proportional to the period during which such part is wholly unoccupied.*
Provided that the aggregate of the allowances made under this sub-section shall in no case exceed the annual value	*Deleted*

(2) For the purposes of this section, the expression "annual value" shall be deemed to mean the sum for which the property might reasonably be expected to let from year to year

Provided that, where the property is in the occupation of the owner for the purposes of his own residence, such sum shall, for the purposes of this section, be deemed not to exceed ten per cent of the total income of the owner

OLD	NEW
	(3) *Where property is owned by two or more persons and their respective shares are definite and ascertainable, such persons shall not in respect of such property be assessed as an association of persons but the share of each such*

NOTES

made in clause (*iii*) of sub-section (1) of section 9 of the Act is intended to remove the discretion formerly given to the Income-tax Officer to determine the amount of the allowance to be made in respect of vacancies —*Select Committee Report on the Bill*

Sub-section (3) —Property is often owned jointly by persons with definite shares and some High Courts have held that such persons are assessable on the income from the property as an association of individuals This amendment provides that such persons shall not be assessed as an association but that their shares will be included in their individual assessments

Sub-section (3) provides that though property is owned by two or more persons in common, if their shares are definite and ascertainable, then assessment should be made on each of the persons individually on their share of income This makes the decisions in *Elias* v *Commissioner of Income-tax*, (63 Cal 538, 9 I T C 1, 1935 I T R 408), *Lakshmidas Devidas and another* v *Commissioner of Income-tax*, (I L R 1937 Bom 830; 10 I T C 414, 1937 I T R 584), *Kheraj Obheya & ors* v *Commissioner of Income-tax*, (10 I T C 419), *Kantisen Mahanji Ganjawalla & Bros* v *Commissioner of Income-tax*, (10 I T C 445) and Dwarakanath Harischandra Pitale & another *In re*, (A I R 1938 Bom 353, 1937 I T R 716) not applicable in future

OLD	NEW
	person in the income from the property as computed in accordance with this section shall be included in his total income
10 (1) The tax shall be payable by an assessee under the head "Business" in respect of the profit or gains of any business carried on by him (Business)	10 (1) The tax shall be payable by an assessee under the head "*Profits and gains of business, profession or vocation*" in respect of the profit or gains of any *business, profession or vocation* carried on by him (Business)

(2) Such profits or gains shall be computed after making the following allowances, namely —

OLD	NEW
(i) any rent paid for the premises in which such business is carried on, provided that when any substantial part of the premises is used as a dwelling-house by the assessee, the allowance under this clause shall be such sum as the Income-tax Officer may determine having regard to the proportional part so used	(i) any rent paid for the premises in which such *business, profession or vocation* is carried on, provided that when any substantial part of the premises is used as a dwelling-house by the assessee, the allowance under this clause shall be such sum as the Income-tax Officer may determine having regard to the *proportional annual value of the part* so used

(ii) in respect of repairs, where the assessee is the tenant only of the premises, and has undertaken to bear the cost of such repairs, the amount paid on account thereof, provided that, if any substantial part of the premises is used by the assessee as a dwelling-house, a proportional part only of such amount shall be allowed,

OLD	NEW
(iii) in respect of capital borrowed for the purposes of the business, where the payment of interest thereon is not in any way dependent on the earning of profits, the amount of the interest paid,	(iii) in respect of capital borrowed for the purposes of the *business, profession or vocation* the amount of the interest paid

NOTES

Section 10 *Sub-section* (1) brings income from professions and vocations under the same head as income from business [Section 11 is deleted]

Sub-section (2) (*iii*) allows interest on capital borrowed for the purposes of the business subject to the condition that the payment of interest is not in any way dependent on the earning of profits The amendment deletes this latter condition but withdraws the allowance to a firm in the case of interest paid to a partner and to any assessee in the case of interest chargeable to tax and payable without British India (not being on a public loan issued before 1st April, 1938) except interest from which tax has been deducted [*see* section 8, section 9 (*i*) (*iv*)]

OLD	NEW
	Provided that no allowance shall be made under this clause in any case for any interest chargeable under this Act which is payable without British India, not being interest on a loan issued for public subscription before the 1st day of April, 1938, except interest on which tax has been paid or from which tax has been deducted under section 18 or in respect of which there is an agent in British India who may be assessed under section 43, or, in the case of a firm, for any interest paid to a partner of the firm

Explanation.—Recurring subscriptions paid periodically by shareholders or subscribers in such Mutual Benefit Societies as may be prescribed, shall be deemed to be capital borrowed within the meaning of this clause;

OLD	NEW
(iv) in respect of insurance against risk of damage or destruction of buildings, machinery, plant, furniture, stocks or stores, used for the purposes of the business, the amount of any premium paid,	(iv) in respect of insurance against risk of damage or destruction of buildings, machinery, plant, furniture, stocks or stores, used for the purposes of the *business, profession or vocation*, the amount of any premium paid;

(v) in respect of current repairs to such buildings, machinery, plant, or furniture, the amount paid on account thereof,

OLD	NEW
(vi) in respect of depreciation of such buildings, machinery,	*(vi) in respect of depreciation of such buildings, machinery,

NOTES

*Clauses (ii) and (iii) of sub-section (2) of Section 10 as amended do not take effect earlier than the 1st day of April, 1940.

"*Sub section* 2 (vi) as amended alters the basis upon which depreciation allowance is to be calculated from the "original cost" to the original cost less the sums previously allowed for depreciation, and except in the case of unabsorbed depreciation which the assessee is entitled at the commencement of the amending Act to carry forward to a succeeding year, it treats depreciation on the same footing as any other expense of the business. Consequently depreciation for any year subsequent to the commencement of the amending Act can only be carried forward for as long as any other loss can be carried forward. But the unabsorbed depreciation at the commencement of the amending Act may be carried forward until fully allowed and is to be allowed before the depreciation due in respect of subsequent years.

It is found in practice that frequently the assessee writes off in his accounts much less than the amount of depreciation at the prescribed rates. Proviso (*b*) to section 10 (2) (vi) has therefore been amended so as to restrict the allowance for depreciation to the amount written off in the assessee's accounts.

OLD

plant, or furniture being the property of the assessee, a sum equivalent to such percentage on the original cost thereof to the assessee as may in any case or class of cases be prescribed

Provided that—

NEW

plant, or furniture being the property of the assessee, a sum equivalent to such percentage on the *written down value thereof* as may in any case or class of cases be prescribed

Provided that—

(*a*) the prescribed particulars have been duly furnished;

OLD

(*b*) where full effect cannot be given to any such allowance in any year owing to there being no profits or gains chargeable for that year, or owing to the profits or gains chargeable being less than the allowance, the allowance or part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following year and deemed to be part of that allowance, or if there is no such allowance for that year, be deemed to be the allowance for that year, and so on for succeeding years; and

NEW

(*b*) where full effect cannot be given to any such allowance in any year *not being a year which ended prior to the 1st day of April*, 1939, owing to there being no profits or gains chargeable for that year, or owing to the profits or gains chargeable being less than the allowance, the allowance or part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following year and deemed to be part of that allowance, or if there is no such allowance for that year, be deemed to be the allowance for that year, and so on for succeeding years, and

(*c*) the aggregate of all such allowances made under this Act or any Act repealed hereby, or under the Indian Income-tax Act, 1886, shall, in no case, exceed the original cost to the assessee of the buildings, machinery, plant, or furniture, as the case may be,

OLD

(*vii*) in respect of any machinery or plant which, in consequence of its having become obsolete, has been sold or discarded, the difference between the original cost to the assessee of the machinery or plant as reduced by the aggregate of the allowances

NEW

(vii) *in respect of any machinery, or plant which has been sold or discarded, the amount by which the written down value of the machinery or plant exceeds the amount for which the machinery or plant is actually sold or its scrap value*

NOTES

Sub section (2) (*vii*) prescribes the allowance for machinery or plant sold or discarded in consequence of its having become obsolete This allowance is now to be given in respect of any machinery or plant sold or discarded and is to be the difference between the excess of the written down value over the sale price or scrap value provided that this amount is written off in the books of the assessee Any excess of the sale price or scrap value over the written down value is to be treated as an assessable profit

OLD	NEW
made in respect of depreciation under clause (*vi*), or any Act repealed hereby, or the Indian Income-tax Act, 1886, and the amount for which the machinery or plant is actually sold, or its scrap value,	*Provided that such amount is actually written off in the books of the assessee.* *Provided further that where the amount for which any such machinery or plant is sold exceeds the written down value, the excess shall be deemed to be profits of the previous year in which the sale took place.*
(*vii-a*) in respect of animals which have been used for the purposes of the business, otherwise than as stock in trade and have died or become permanently useless for such purposes, the difference between the original cost to the assessee of the animals and the amount, if any, realised in respect of the carcasses or animals;	(*viii*) in respect of animals which have been used for the purposes of the *business, profession or vocation* otherwise than as stock in trade and have died or become permanently useless for such purposes, the difference between the original cost to the assessee of the animals and the amount, if any, realised in respect of the carcasses or animals,
(*viii*) any sums paid on account of land-revenue, local rates or municipal taxes in respect of such part of the premises as is used for the purposes of the business;	(*ix*) any sums paid on account of land-revenue, local rates or municipal taxes in respect of such part of the premises as is used for the purposes of the *business, profession or vocation*,
(*viii-a*) any sum paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission	(*x*) any sum paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission
Provided that the amount of the bonus or commission is of a reasonable amount with reference to—	Provided that the amount of the bonus or commission is of a reasonable amount with reference to—
(*a*) the pay of the employee and the conditions of his service,	(*a*) the pay of the employee and the conditions of his service,
(*b*) the profits of the business for the year in question, and	(*b*) the profits of the *business, profession or vocation* for the year in question, and
(*c*) the general practice in similar businesses,	(*c*) the general practice in similar *businesses, professions or vocations*,

OLD.	NEW.
	(xi) when the assessee's accounts in respect of any part of his business, profession or vocation are not kept on the cash basis, such sum, in respect of bad and doubtful debts, due to the assessee in respect of that part of his business, profession or vocation, and in the case of an assessee carrying on a banking or money-lending business, such sum in respect of loans made in the ordinary course of such business as the Income-tax Officer may estimate to be irrecoverable but not exceeding the amount actually written off as irrecoverable in the books of the assessee *Provided that if the amount ultimately recovered on any such debt or loan is greater than the difference between the whole debt or loan and the amount so allowed, the excess shall be deemed to be a profit of the year in which it is recovered, and if less, the deficiency shall be deemed to be a business expense of that year*
(ix) any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of earning such profits or gains Provided that nothing in clause (viii) or clause (ix) shall be deemed to authorise the allowance of any sum paid on account of any cess, rate or tax levied on the profits or gains of any business or assessed at a proportion of or otherwise on the basis of any such profits or gains	(xii) any expenditure (*not being in the nature of capital expenditure or personal expenses of the assessee*) *laid out or expended wholly and exclusively for the purpose of such business, profession or vocation*

NOTES

Sub section (2) (*xi*) is a new provision, which gives an allowance in respect of bad and doubtful debts written off in the accounts of the assessee

Five new sub sections (3), (4), (5), (6) and (7) are added in section 10 after sub section (2) *Sub section* (3) gives in the case of assets not wholly used for the purposes

OLD. | NEW.

(3) *Where any building, machinery, plant or furniture in respect of which any allowance is due under clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (2) is not wholly used for the purposes of the business, profession or vocation, the allowance shall be restricted to the fair proportional part of the amount which would be allowable if such building machinery, plant or furniture was wholly so used*

(4) *Nothing in clause (ix) or clause (xii) of sub-section (2) shall be deemed to authorise the allowance of any sum paid on account of any cess, rate or tax levied on the profits or gains of any business, profession or vocation or assessed at a proportion of or otherwise on the basis of any such profits or gains, and nothing in clause (xii) of sub-section (2) shall be deemed to authorise—*

(*a*) *any allowance in respect of a payment which is chargeable under the head "Salaries" if it is payable without British India and tax has not been paid thereon nor deducted therefrom under section 18; or*

(*b*) *any allowance in respect of any payment by way of interest, salary, commission or remuneration made by a firm to any partner of the firm, or*

NOTES

of the business a proportionate part of the allowance for insurance premia, repairs, depreciation and obsolescence

Sub section (4) repeats the present proviso to section 10 (2) (*ix*) forbidding the allowance of cesses, rates or taxes on business profits and also forbids (*a*) the allowance of sums chargeable under the head "salaries if payable without British India" and tax is not deducted therefrom, (*b*) payments by a firm to any partner and (*c*) payments by an employer to a Provident or other such fund if he has not made effective arrangements to have tax deducted from payments made from the fund

The disallowance of salary payments abroad is repeated in section 12 (2), proviso

(c) The disallowance in respect of Provident Funds is necessary because in practice it

OLD

(3) In sub-section (2), the word "paid" means actually paid or incurred according to the method of accounting upon the basis of which the profits or gains are computed under this section

NEW

(c) any allowance in respect of a payment to a provident or other fund established for the benefit of employees unless the employer has made effective arrangements to secure that tax shall be deducted at source from any payments made from the fund which are taxable under the head "Salaries"

(5) *In sub-section* (2), *'paid' means actually paid or incurred according to the method of accounting upon the basis of which the profits or gains are computed under this section, "plant" includes vehicles, books, scientific apparatus and surgical equipment purchased for the purpose of the business, profession or vocation, and "written down value" means—*

(a) in the case of assets acquired in the previous year the actual cost to the assessee,

(b) in the case of assets acquired before the previous year but after the commencement of the Indian Income-tax (Amendment) Act, 1939, *the actual cost to the assessee less all depreciation allowable to him under this section,*

(c) in the case of assets acquired before the commencement of the Indian Income-tax (Amendment) Act, 1939, *the actual cost to the assessee less for each financial year since acquisition the amount of depreciation applicable to the assets at the rates in force for each such year since the* 1st *day*

NOTES

is found that payments of accumulated balance from such fund are made abroad and the Income-tax authorities have no means of recovering tax on them

Sub-section (5) contains definitions the chief of which is the definition of "written down value" for the purpose of depreciation and obsolescence allowances 'Plant' is defined as including books purchased for the purpose of the business, profession and vocation

OLD	NEW
	of April, 1922, and at the rates in force on the 1st day of April, 1922, for each such year prior to that date
	Provided that where the provisions of the proviso to sub-section (2) of section 26, are applicable, the actual cost to the assessee referred to in clauses (a), (b) and (c) shall be the actual cost to the person succeeded in the business, profession or vocation
	Provided further that there shall not be so deducted from the actual cost any depreciation allowance or part of any depreciation allowance which was due for a year which ended prior to the 1st day of April, 1939, but to which full effect was not given owing to the absence of profits or gains chargeable for that year or owing to the profits or gains so chargeable being less than the allowance
	(6) *A trade, professional or similar association performing specific services for its members for remuneration definitely related to those services shall be deemed for the purposes of this section to carry on business in respect of those services and the profits and gains therefrom shall be liable to tax accordingly*
	(7) *Notwithstanding anything to the contrary contained in section* 8, 9, 10, 12 *or* 18, *the*

NOTES

Sub section (6) makes liable to tax the profits of a trade, professional or similar association performing services for its members for remuneration *Objects and Reasons*

Section 10 —The first change in sub clause (*b*) improves the wording of clause (*i*) of sub-section (2) of section 10 of the Act The verbal change indicated in the proviso contained in sub clause (*b*) (*ii*) of the Bill has the same purpose as the similar change already referred to in clause 9 and to be found also in our revision of clause 12 The other change indicated in clause 10 (*b*) (*iii*) of the Bill has the effect of altering the proposals relating to depreciation which were contained in the Bill Taken along with the second proviso now added to the definition, contained in sub section (5) of section 10 of the Act, of the words "written down value" this alteration substitutes for the proposals regarding depreciation contained in the Bill provisions which remove the restriction of de-

OLD	NEW
	profits and gains of any business of insurance and the tax payable thereon shall be computed in accordance with the rules contained in the Schedule to this Act
11 (1) The tax shall be payable by an assessee under the head "Professional earnings" in respect of the profits or gains of any profession or vocation followed by him Professional earnings	11 *Omitted*

NOTES

preciation to the amount written off in the books of the assessee, remove the restriction to six years of the carry forward of depreciation, and secure that depreciation which is unabsorbed at the time when the law is changed shall not be deducted from the original cost of plant, machinery, etc, in arriving at the written down value The effect of this provision is to spread the writing off of the unabsorbed depreciation over a longer period. The proposals contained in the Bill limited the amount of depreciation to the amount written off in the books of the assessee and treated depreciation arising after the change of the law, as a loss like other losses, so that it could be carried forward only for six years Depreciation unabsorbed at the time of the change of the law was to be carried forward without time limit until it was absorbed but was to be deducted from, that is to say, allowed against, profits before any further allowance for depreciation was to be made for any particular year subsequent to the change of the law

Government have given us an assurance that the new rates consequent on the change from the cost basis to the written down basis will be discussed with the interests concerned before they are fixed, and that the new provisions will not be brought into operation until the rates have been so fixed

The main change made in clause (*xi*) of sub section (1) of the Act, as amended by clause 10 (*b*) (*ii*) of that Bill, makes it clear that irrecoverable loans in a banking or money lending business are to be allowed for A minor drafting change is also made

The re-draft of section 10 (2) (*xii*) of the Act contained in clause 10 (*b*) (*vi*) of the Bill substitutes the wording of the English Act for the wording adopted in the Indian Act

The words now inserted in the new sub-section (4) of section 10 of the Act, as substituted by clause 10 (*c*) of the Bill, provide for grant of some relief, now that the system of taxation is changed to the accrual basis, where double income tax relief is not given in the country where the profits accrue or arise The second change shown in the sub section is similar to that already referred to in connexion with clause 9, and found also in clause 12

In the new sub section (5) of section 10 of the Act in addition to the change already referred to in the definition of "written down value," we have inserted a reference to vehicles in the definition of "plant" and we have made a verbal change of the word "allowed" to the word "allowable "

We have also added a proviso, already referred to in our remarks above on clause 10 (*b*) (*iii*), to ensure that depreciation allowance due for a year prior to the change of the law but unabsorbed shall not be deducted from original cost in arriving at the written down value

The new sub section (7) which has been added to section 10 has the object of including in the Act and placing on a statutory basis the provisions relating to the computation of the profits and gains of insurance business which were formerly contained in rules made by the Central Board of Revenue under the power conferred by section 59 of the Act —*Select Committee Report*

Section 11 —This is omitted as income from profession or vocation is also included in section 10

OLD	NEW.
(2) Such profits or gains shall be computed after making the following allowances, namely —	
(i) any expenditure (not being in the nature of capital expenditure) incurred solely for the purposes of such profession or vocation, and not being personal expenses of the assessee,	
(ii) in respect of depreciation of buildings and depreciation and obsolescence of machinery, apparatus, appliances, plant, furniture or other capital assets being the property of the assessee and used solely for the purposes of such profession or vocation, the allowances specified in clauses (vi) and (vii) of sub-section (2) of section 10 subject to all the conditions specified in those clauses	
(3) Professional fees paid in any part of India to a person ordinarily resident in British India shall be deemed to be profits or gains chargeable under this head	
12 Other sources (1) The tax shall be payable by an assessee under the head "Other sources" in respect of income, profits and gains of every kind and from every source to which this Act applies (if not included under any of the preceding heads)	12 Other sources (1) The tax shall be payable by an assessee under the head "*Income from other sources*" in respect of income, profits and gains of every kind *which may be included in his total income* (if not included under any of the preceding heads)
(2) Such income, profits and gains shall be computed after making allowance for any ex-	(2) Such income, profits and gains shall be computed after making allowance for any ex-

NOTES

Section 12, *Sub section* (2) as amended disallows interest (other than interest on a public loan issued before 1st April 1938) and 'salaries' payable without British India unless tax has been deducted [Compare amended sections 9 (i) (iv), proviso, 10 (2), (iii), proviso, and 10 (4) (a)]

Sub section (3)—a new provision—grants depreciation on machinery, plant and furniture let out on hire If the business of the assessee is letting machinery, plant, and furniture on hire he will be entitled to the allowance under the provisions of section 10 (2) (vi)

OLD

penditure (not being in the nature of capital expenditure) incurred solely for the purpose of making or earning such income, profits or gains, provided that no allowance shall be made on account of any personal expenses of the assessee

NEW

penditure (not being in the nature of capital expenditure) incurred solely for the purpose of making or earning such income, profits or gains, *provided that no allowance shall be made on account of.—*

(a) any personal expenses of the assessee, or

(b) any interest chargeable under this Act, which is payable without British India, not being interest on a loan issued for public subscription before the 1st day of April, 1938, or not being interest on which tax has been paid or from which tax has been deducted under section 18, or

(c) any payment which is chargeable under the head "Salaries", if it is payable without British India and tax has not been paid thereon nor deducted therefrom under section 18

(3) Where an assessee lets on hire machinery, plant or furniture belonging to him, he shall be entitled to allowances in accordance with the provisions of clauses (iv), (v), (vi) *and* (vii) *of sub-section* (2) *of section* 10

Managing Agency Commission

12-A *Where a managing agent of a company is liable under an agreement made for adequate consideration to share managing agency*

NOTES

Section 12 *A* *New* —This introduces into the Act a new provision for the special case in which managing agency commission is shared among two or more recipients and provides a means by which each of the recipients may be charged only on the share which he is actually entitled to receive

This section has been introduced to get over the decision of the Privy Council in *Tata Hydro Electric Agencies* v *Commissioner of Income-tax,* (64 I A 215, I L R 1937 Bom 388, A I R 1937 P C 139, (1937) 2 M L J 763, 1937 I T R 202) and of the Bombay High Court in *Macdonald & Co* v *Commissioner of Income-tax,* (A I R 1935 Bom 197, 37 Bom L R 126, 1935 I T R 459, 7 I T C 466) wherein it was held that where under a contract, part of the managing agency remuneration is payable to another, the same cannot be allowed as a deduction to the Managing Agents

OLD	NEW
	commission with a third party or parties, the said agent and the said party or parties shall file a declaration showing the proportion in which such commission is shared between them, and on proof to the satisfaction of the Income-tax Officer of the facts contained in such declaration such agent and each such party shall be chargeable only on the share to which such agent or party is entitled under the agreement
13 Income, profits and gains shall be computed, for the purposes of sections 10, 11 and 12, in accordance with the method of accounting regularly employed by the assessee Method of accounting	13 Income, profits and gains shall be computed, for the purposes of sections 10 * * * and 12, in accordance with the method of accounting regularly employed by the assessee Method of accounting

Provided that, if no method of accounting has been regularly employed, or if the method employed is such that, in the opinion of the Income-tax Officer, the income, profits and gains cannot properly be deduced therefrom, then the computation shall be made upon such basis and in such manner as the Income-tax Officer may determine.

Exemptions of a general nature

14 (1) The tax shall not be payable by an assessee in respect of any sum which he receives as a member of a Hindu undivided family

OLD	NEW
(2) The tax shall not be payable by an assessee in respect of—	(2) *The tax shall not be payable by an assessee*—

NOTES

Section 14 *Sub section* (2) (*a*) exempts from taxation dividends of companies whose profits have been assessed to tax This provision needed amendment as the result of a Privy Council decision that it exempts the whole dividend even when only part of the Company's profits have been taxed Instead of amending it, it has been decided to delete it and amend section 16 (2) and section 18 (5) The result of these changes will be that a dividend will no longer be exempt It will be on the same footing as interest on securities and credit for the appropriate amount of tax on it will be given in the assessment Other sections affected are sections 48 and 49

Sub section (2), *clauses* (*b*) and (*c*) of section 14 exempt the proportionate shares of the taxed profits of firms and associations of individuals Since it has been decided [section 23 (5)] to tax the partners of registered firms directly, this sub-section as amended relates only to unregistered firms and it exempts not the amount (which is now exempted) of the firm's profits proportionate to the assessee's share therein at the time of making the assessment but the portion of the firm's taxed profits which the assessee is entitled to receive This change is made in pursuance of a decision to take as the basis for income tax purposes the actual shares of the previous year The same principle has been adopted in amending section 26

OLD

(a) any sum which he receives by way of dividend as a shareholder in a company where the profits or gains of the company have been assessed to income-tax, or

(b) such an amount of the profits or gains of any firm which have been assessed to income-tax as is proportionate to his share in the firm at the time of such assessment, or

(c) any sum which he receives as his share of the profits or gains of an association of individuals, other than a Hindu undivided family, company or firm, where such profits or gains have been assessed to income-tax

15 (1) The tax shall not be payable by an assessee in respect of any sums paid by him to effect an insurance on his own life or on the life of his wife, or in respect of a contract for a deferred annuity on his own life or on the life of his wife, or as a contribution to any Provident Fund to which the Provident Funds Act, 1897, applies

Exemption in the case of life insurances.

NEW.

(a) if a partner of an unregistered firm, in respect of any portion of his share in the profits and gains of the firm computed in the manner laid down in clause (b) *of sub-section* (1) *of section* 16 *on which the tax has already been paid by the firm, or*

(b) if a member of an association of persons other than a Hindu undivided family, a company, or a firm, in respect of any portion of the amount which he is entitled to receive from the association on which tax has already been paid by the association

15 (1) The tax shall not be payable *in respect of any sums paid by an assessee to effect an insurance on the life of the assessee or on the life of a wife or husband of the assessee or in respect of a contract for a deferred annuity on the life of the assessee or on the life of a wife or husband of the assessee,* or as a contribution to any Provident Fund to which the Provident Funds Act, 1925, applies

Exemption in the case of life insurances

NOTES

Sub section (2) (*b*) of section 14 as now amended exempts not the amount which a member of an association receives but the amount that he is entitled to receive —*Objects and Reasons*

Section 15 gives exemption in the case of life insurance premia and payments to Provident Funds and limits the exemption in respect of those payments and payments to Family Pension Funds to 1/6th of total income In the case of large incomes this is too generous an allowance and therefore sub-section (3) as amended limits it to Rs 6,000 or up to 12,000 in the case of a Hindu Undivided Family

"We have increased the limit imposed on sums exempted from income-tax by reason of payments for life insurance and contributions to Provident Funds from six thousand rupees to twelve thousand rupees in the case of a Hindu undivided family The second change made in this clause is merely a drafting improvement "—*Select Committee Report*

(2) Where the assessee is a Hindu undivided family, there shall be exempted under sub-section (1) any sums paid to effect an insurance on the life of any male member of the family or of the wife of any such member

OLD	NEW
(3) The aggregate of any sums exempted under this section shall not, together with any sums exempted under the proviso to sub-section (1) of section 7, and any sums exempted under sub-section (1) of section 58-F, exceed one-sixth of the total income of the assessee	(3) The aggregate of any sums exempted under this section shall not, together with any sums exempted under the *second proviso* to sub-section (1) of section 7 and any sums exempted under sub-section (1) of section 58-*F*, exceed *in the case of an individual, one-sixth of the total income of the assessee, or six thousand rupees, whichever is less, and in the case of a Hindu undivided family, one-sixth of the total income of the assessee, or twelve thousand rupees, whichever is less*
16 (1) In computing the total income of an assessee sums exempted under the proviso to sub-section (1) of section 7, the second and third provisos to section 8, sub-section (2) of section 14 and section 15, shall be included Exemptions and exclusions determining the total income	**16** (1) In computing the total income of an assessee— Exemptions and exclusions determining the total income (*a*) *any sums exempted under the proviso to sub-section* (1) *of section* 7, *the second and third provisos to section* 8, *sub-section* (2) *of section* 14 *and section* 15 *shall be included,* (*b*) *when the assessee is a partner of a firm, then, whether the firm has made a profit or a loss, his share (whether a net profit or a net loss) shall be taken to be any salary, interest, commission*

NOTES

Section 16 specifies certain sums which are to be included in "total income" It is amended in the following ways —

Sub section (1) (*b*), a new provision, prescribes the way in which the share (whether profit or loss) of a partner in a firm is to be computed This method of computation follows the amendment of section 10 (4) (*b*), disallowing in the firm's assessment payments to partners

Sub-section (1) (*c*), is an important provision designed to prevent the avoidance of tax by the simple device of settling income upon another person whose rate of tax is lower than that of the settlor, or by a transfer of assets, so that the income therefrom arises to such other person This amendment provides that the income in such a case is to be treated as the income of the settlor or transferor Where, however, the assets are irrevocably transferred to another person, other than in the circumstances dealt with in sub section (3) (*b*), the income therefrom is not to be deemed to be income of the transferor

OLD	NEW
	or other remuneration payable to him by the firm in respect of the previous year increased or decreased respectively by his share in the balance of the profit or loss of the firm after the deduction of any interest, salary, commission or other remuneration payable to any partner in respect of the previous year *Provided that if his share so computed is a loss, such loss may be set off or carried forward and set off in accordance with the provisions of section 24,* (c) *all income arising to any person by virtue of a settlement or disposition whether revocable or not, and whether effected before or after the commencement of the Indian Income-tax (Amendment) Act, 1939, from assets remaining the property of the settlor or disponer shall be deemed to be income of the settlor or disponer and all income arising to any person by virtue of a revocable transfer of assets shall be deemed to be income of the transferor* *Provided that for the purposes of this clause a settlement, disposition or transfer shall be deemed to be revocable if it contains any provision for the re-transfer directly or indirectly of the income or assets to the settlor, disponer or transferor, or in any way gives the settlor disponer or transferor a right to re-assume power directly or indirectly over the income or assets:* *Provided further that the expression 'settlement or disposition' shall for the purposes of this clause include any disposition,*

OLD.	NEW
	trust, covenant, agreement or arrangement, and the expression "settlor or disponer" in relation to a settlement or disposition shall include any person by whom the settlement or disposition was made
	Provided further that this clause shall not apply to any income arising to any person by virtue of a settlement or disposition which is not revocable for a period exceeding six years or during the lifetime of the person and from which income the settlor or disponer derives no direct or indirect benefit, but that the settlor shall be liable to be assessed on the said income as and when the power to revoke arises to him
(2) For the purposes of sub-section (1), any sum mentioned in clause (*a*) of sub-section (2) of section 14 shall be increased by the amount of income-tax payable by the company in respect of the dividend received	(2) *For the purposes of inclusion in the total income of an assessee any dividend shall be deemed to be income of the previous year in which it is paid, credited or distributed or deemed to have been paid, credited or distributed to him, and shall be increased by the amount of income-tax (but not super-tax) payable thereon calculated at the rate applicable to the total income of a company for the financial year in which the dividend is paid credited or distributed or deemed to have been paid, credited or distributed*
	Provided that when any portion of the profits and gains of the

NOTES

Sub section (2) of section 16 provides for the inclusion in "total income" of the tax on the dividend along with the dividend As amended it provides for the inclusion of partly taxed profits The form of the sub section has been altered to suit the definition of "dividend" in section 2 (6 A)

Sub-section (2) nullifies the decision of the Privy Council in *The Commissioner of Income tax* v *Hungerford Investment Trust Ltd*, (63 I A 359, I L R 1937-1-Cal 237, A I R 1936 P C 219, 71 M L J 405, 11 I T C 46, 1936 I T R 270 that a shareholder cannot be assessed in respect of dividends received by him from the profits of a company which included income that was not taxable at the hands of the company

OLD	NEW
	company out of which such dividend has been paid, credited or distributed or deemed to have been paid, credited or distributed was not liable to income-tax in the hands of the company, the income-tax to be added under this section shall be calculated upon only such portion of the dividend as the amount of the profits and gains of the company liable to income-tax bears to the total profits and gains of the company

(3) In computing the total income of any individual for the purpose of assessment, there shall be included—

(*a*) so much of the income of a wife or minor child of such individual as arises directly or indirectly—

(*i*) from the membership of the wife in a firm of which her husband is a partner;

(*ii*) from the admission of the minor to the benefits of partnership in a firm of which such individual is a partner,

(*iii*) from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration or in connection with an agreement to live apart, or

OLD	NEW
(*iv*) from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual, and	(*iv*) from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual *otherwise than for adequate consideration*, and
(*b*) so much of the income of any association of individuals	(*b*) so much of the income of any *person or association of per-*

NOTES

Sub section (3) (*b*) —The wording of this clause has been found to be defective as it may be possible for a person to transfer income to an association of individuals which includes a person other than that individual or his wife but in such circumstances that the income becomes the income of the wife or minor child For this reason the words ' consisting of such individual and his wife'' are being omitted and the words ''for the benefit of his wife or a minor child or both'' are being added It will be seen that the provisions in sub section (1) (*c*) cover all cases of transfers of income and also cover cases of revocable transfers of assets This clause as now amended covers the further cases of irrevocable transfers of assets where the income accrues to the benefit of the wife or minor child of the transferor —*Objects and reasons*

Section 16 —We have supplemented clause (*c*) of the new sub section (1) of section 16 of the Act by the addition of two definitions, the first explaining the term ''revocable'' and the second explaining the terms ''settlement or disposition'' and ''settlor or disponer ''

The change made in sub-section (3) of section 16 of the Act, as amended by sub-clause (*b*) of this clause of the Bill, introduces into clause (*b*) of sub section (3) of section 16 of the Act the words ''otherwise than for adequate consideration'' which

OLD	NEW
consisting of such individual and his wife as arises from assets transferred to the association by such individual	*sons* as arises from assets transferred *otherwise than for adequate consideration to the person or association* by such individual *for the benefit of his wife or a minor child or both*
17 Where owing to the fact that the total income of any assessee has reached or exceeded a certain limit, he is liable to pay income-tax or to pay income-tax at a higher rate the amount of income-tax payable by him shall, where necessary, be reduced so as not to exceed the aggregate of the following amounts, namely — Reduction of tax when margin above a certain limit is small (*a*) the amount which would have been payable if his total in-	17. (1) *Where a person is not resident in British India, and is a British subject as defined in section 17 of the British Nationality and Status of Aliens Act, 1914, or a subject of a State in India or Burma, the tax, including super-tax, payable by him or on his behalf on his total income shall be an amount bearing to the total amount of the tax including super-tax which would have been payable on his total world income* Determination of tax payable in certain special cases

NOTES

are already to be found in clause (*a*) (*iii*) of that sub-section and had previously been omitted by oversight *Select Committee Report*

The last proviso to s 16 (1) (*c*), was added by the Assembly to make it clear that only those settlements and trusts which are likely to lend themselves to evasion of tax are intended to be affected and not other cases

The words "otherwise than for adequate consideration" were added by the Assembly in s 16 (3) (*a*) (*iv*) and 16 (3) (*b*), to bring that clause also into line with s 16 (3) (*a*) (*iii*)

Section 17 (marginal relief) which becomes superfluous owing to the adoption of the "slab" system of rates is deleted and a new section 17 prescribing the way tax is to be determined in certain cases is substituted

Sub sections (1) *and* (2) determine the tax payable by non residents with non taxable foreign income and persons with exempted income which is included in total income The principle adopted is to calculate the tax (including super tax) on the whole income of the assessee and levy that proportion of it which the liable income bears to the whole income The important point about this amendment is that the rate applied to the taxable income is the rate applicable to the whole income In the case of non British non residents income-tax will be payable at the maximum rate—*Objects and Reasons*

* * * * *

The reference to Burma introduced in sub-section (1) of section 17 of the Act is made for the purpose of according to States in Burma the same treatment as is accorded by the Burman law to States in India

The words inserted in sub section (2) of section 17 of the Act are necessary, because an unregistered firm may under section 23 (5) of the Act be assessed as a registered firm and the present sub section is not intended to apply where an unregistered firm is so assessed *Select Committee Report*

OLD	NEW
come had been a sum less by one rupee than that limit, and (b) the amount by which his total income exceeds that sum	*had it been his total income the same proportion as his total income bears to his total world income, and in the case of any other non-resident person, the income-tax payable by him or on his behalf on his total income shall be at the maximum rate and the super-tax payable thereon shall be an amount bearing to the total amount of super-tax which would have been payable on his total world income had it been his total income the same proportion as his total income bears to his total world income* *(2) Where there is included in the total income of any assessee any income (including income from a share in an unregistered firm, if assessed as such) exempted from tax by or under the provisions of this Act, the income-tax excluding super-tax payable by the assessee shall be an amount bearing to the total amount of the income-tax excluding super-tax which would have been payable on the total income had no part of it been exempted the same proportion as the unexempted portion of the total income bears to the total income*

CHAPTER IV

DEDUCTIONS AND ASSESSMENT

Payment by deduction at source

18 (1) Omitted by Act XVIII of 1933

OLD	NEW
(2) Any person responsible for paying any income chargeable	(2) Any person responsible for paying any income chargeable

NOTES

Section 17, *Sub section* (2) —In the Assembly the words "the income-tax excluding super tax payable by the assessee shall be an amount bearing to the total amount of the income-tax excluding super tax" were substituted for the words "the tax payable by the assessee shall be an amount bearing to the total amount of the tax including super-tax" originally in the Bill

The object of this was to prevent what would have been otherwise done, *viz* , to include the allowance of relief from super-tax in respect of payments of life assurance and to exclude them also from tax free securities This was not the intention

OLD	NEW
under the head "Salaries" shall, at the time of payment, deduct income-tax but not super-tax on the amount payable at the rate applicable to the estimated income of the assessee under this head:	under the head "Salaries" shall, at the time of payment, deduct income-tax *and super-tax* on the amount payable *at a rate representing the average of the rates applicable to the estimated total income of the assessee under this head*

Provided that such person may, at the time of making any deduction, increase or reduce the amount to be deducted under this sub-section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct

(2-*A*) Notwithstanding anything hereinbefore contained for the purpose of making the deduction under sub-section (2), there shall be included in the amount payable any income chargeable under the head "Salaries" which is payable to the assessee out of India by or on behalf of the Crown, and the value in rupees of such income shall be calculated at the prescribed rate of exchange

OLD	NEW
	(2-*B*) *Any person responsible for paying any income chargeable under the head "Salaries" to a person not resident in British India shall at the time of payment deduct income-tax at the maximum rate and also super-tax at the rate or rates applicable to the estimated income of the assessee under this head*

(3) The person responsible for paying any income chargeable under the head "Interest on securities" shall, unless otherwise prescribed in the case of any security of the Central Government, at the time of payment, deduct Income-tax but not super-tax on the amount of the interest payable at the maximum rate

OLD	NEW
Provided that where the Income-tax Officer gives a certificate in writing (which certificate he shall give in every proper case on the application of the assessee) that to the best of his belief the	Provided that where the Income-tax Officer gives a certificate in writing (which certificate he shall give in every proper case on the application of the assessee) that to the best of his belief the

NOTES

Section 18 deals with deduction of tax at source and is amended in the following ways —

Sub section (2) as amended provides for deduction of super tax at source from "salaries" and is otherwise amended to conform with the "slab" system of rates

Sub section (2 *B*), a new provision, provides for the deduction of income-tax at the maximum rate and super tax at source from "salaries" payable to non residents

OLD.	NEW.
total income of a recipient will be less than the minimum liable to income-tax or will be liable to a rate of income-tax less than the maximum rate, the person responsible for paying any income herein referred to to such recipient shall, until such certificate is cancelled by the Income-tax Officer, pay the income without deduction or deduct the tax at such less rate, as the case may be	total income *or the total world income* of a recipient will be less than the minimum liable to income-tax or will be liable to a rate of income-tax less than the maximum rate, the person responsible for paying any income *referred to in this sub-section or in sub-section (2-B), as the case may be,* to such recipient shall, until such certificate is cancelled by the Income-tax Officer, pay the income without deduction or deduct the tax at such less rate, as the case may be
	(3-*A*) *Any person responsible for paying to a person not resident in British India any interest not being "Interest on Securities", or any other sum chargeable under the provisions of this Act, shall, at the time of payment, unless he is himself liable to pay income-tax thereon as an agent, deduct income-tax at the maximum rate*
(3-A) Where the Income-tax Officer has reason to believe that the total income of any person residing out of British India to whom any interest not being "Interest on Securities" is payable, will in any year exceed the maximum amount which is not chargeable with super-tax under the law for the time being in force, he may, by order in writing, require the person responsible for paying such interest to such person to deduct at the time of payment income-tax and super-tax at the rates determined by the Income-	(3-*B*) Where the Income-tax Officer has reason to believe that the *total world income* of any person residing out of British India to whom any interest not being "Interest on Securities" *or any other sum chargeable under this Act* is payable, will in any year exceed the maximum amount which is not chargeable with super-tax under the law for the time being in force, he may, by order in writing, require the person responsible for *making such payments* to such person to deduct at the time of payment

NOTES

Section 18, *Sub section* (3 *A*), a new provision, provides for deduction of tax at source from interest and other payments made to non residents In the case of residents it is not advisable to make such deduction because of practical complications, but in the case of non residents it is advisable to secure the tax in this way if it can be done Where deduction at source is not practicable, the payments will be disallowed in the payer's assessments (Sections 9, 10 and 12) Consequential amendments are made in sub sections (3-*B*) (3-*C*) and (3-*D*) [which are re numbered (3 *C*), (3-*D*) and (3-*E*)]

OLD	NEW.
tax Officer to be applicable to the total income of such person in that year	super-tax at the rates determined by the Income-tax Officer to be applicable to the *total world income* of such person in that year.
(3-B) Where the person responsible for paying any interest not being "Interest on Securities" to any person pays to that person in any year an amount of such interest exceeding in the aggregate the maximum amount which is not chargeable with super-tax under the law for the time being in force, the person responsible for paying such interest shall, if he has not reason to believe that the recipient is resident in British India, and no order under sub-section (3-A) has been received in respect of such recipient, deduct at the time of payment income-tax on the total amount of such interest at the rate appropriate to such total, and super-tax on the amount by which such total exceeds the maximum amount not chargeable with super-tax at the rate applicable to such excess	(3-*C*) Where the person responsible for paying any interest not being "Interest on Securities" *or any other sum chargeable under this Act* to any person *makes to that person in any year payments* exceeding in the aggregate the maximum amount which is not chargeable with super-tax under the law for the time being in force, the person responsible for *making such payments,* shall, if he has not reason to believe that the recipient is resident in British India, and no order under *sub-section* (3-*B*) has been received in respect of such recipient, deduct at the time of payment * * * * super-tax on the amount by which *the total amount of such payments* exceeds the maximum amount not chargeable with super-tax at the rate applicable to such excess
(3-C) Where the Income-tax Officer has reason to believe that any person, who is a shareholder in a company, is resident out of British India and that the *total* income of such person will in any year exceed the maximum amount which is not chargeable to super-tax under the law for the time being in force, he may, by order in writing, require the principal officer of the company to deduct at the time of payment of any dividend from the company to the shareholder in that year super-tax at such rate as the Income-tax Officer may determine as being the rate applicable in respect of the	(3-*D*) Where the Income-tax Officer has reason to believe that any person, who is a shareholder in a company, is resident out of British India and that the total *world income* of such person will in any year exceed the maximum amount which is not chargeable to super-tax under the law for the time being in force, he may, by order in writing, require the principal officer of the company to deduct at the time of payment of any dividend from the company to the shareholder in that year super-tax at such rate as the Income-tax Officer may determine as being the rate applicable in res-

OLD.	NEW.
income of the shareholder in that year.	pect of the income of the shareholder in that year.
(3-*D*) If in any year the amount of any dividend or the aggregate amount of any dividends paid to any shareholder by a company (together with the amount of any income-tax payable by the company in respect thereof) exceeds the maximum amount of the total income of a person which is not chargeable to super-tax under the law for the time being in force, and the principal officer of the company has not reason to believe that the shareholder is resident in British India, and no order under sub-section (3-C) has been received in respect of such shareholder by the principal officer from the Income-tax Officer, the principal officer shall at the time of payment deduct super-tax on the amount of such excess at the rate which would be applicable under the law for the time being in force if the amount of such dividend or dividends (together with the amount of such income-tax as aforesaid) constituted the whole total income of the shareholder	(3-*E*) If in any year the amount of any dividend or the aggregate amount of any dividends paid to any shareholder by a company (together with the amount of any income-tax payable by the company in respect thereof) exceeds the maximum amount of the total income of a person which is not chargeable to super-tax under the law for the time being in force, and the principal officer of the company has not reason to believe that the shareholder is resident in British India, and no order under *sub-section* (3-*D*) has been received in respect of such shareholder by the principal officer from the Income-tax Officer, the principal officer shall at the time of payment deduct super-tax on the amount of such excess at the rate which would be applicable under the law for the time being in force, if the amount of such dividend or dividends (together with the amount of such income-tax as aforesaid) constituted the whole total income of the shareholder

(4) All sums deducted in accordance with the provisions of this section shall, for the purpose of computing the income of an assessee, be deemed to be income received

OLD.	NEW.
(5) Any deduction made in accordance with the provisions of this section shall be treated as a payment of income-tax or super tax on behalf of the person from whose income the deduction was made, or of the owner of the security, as the case may be, and	(5) Any deduction made in accordance with the provisions of this section *and any sum by which a dividend has been increased under sub-section* (2) *of section* 16 shall be treated as a payment of income-tax or super-tax on behalf of the person from whose

NOTES

Section 18, *Sub section* (5), as amended, includes income-tax on a dividend as a sum for which credit is to be given to the shareholder in his assessment.

OLD.	NEW.
credit shall be given to him therefor in the assessment, if any, made for the following year under this Act	income the deduction was made, or of the owner of the security *or of the shareholder*, as the case may be, and credit shall be given to him therefor in the assessment, if any, made for the following year under this Act

Provided that, if such person or such owner obtains, in accordance with the provisions of this Act, a refund of any portion of the tax so deducted, no credit shall be given for the amount of such refund

OLD.	NEW.
Provided further that where such person or owner is a person whose income is included under the provisions of sub-section (3) of section 16 in the total income of another person that person shall be deemed to be the person or owner on whose behalf payment has been made and to whom credit shall be given in the assessment for the following year	Provided further that where such person or owner is a person whose income is included under the provisions of *clause (c) of sub-section* (1) *or sub-section* (3) *of section* 16, *section 44-D, or section 44-E*, in the total income of another person *such other person* shall be deemed to be the person or owner on whose behalf payment has been made and to whom credit shall be given in the assessment for the following year

(6) All sums deducted in accordance with the provisions of this section shall be paid within the prescribed time by the person making the deduction to the credit of the Central Government or as the Central Board of Revenue directs

OLD.	NEW.
(7) If any such person does not deduct and pay the tax as required by or under this section, he shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of the tax	(7) If any such person does not deduct *or after deducting fails to pay* the tax as required by or under this section, *he, and in the cases specified in sub-sections (3-D) and (3-E) the company of which he is the principal officer* shall, without prejudice to any other consequences which *he or it* may incur, be deemed to be an assessee in default in respect of the tax

Provided that the Income-tax Officer shall not make a direction under sub-section (1) of section 46 for the recovery of any penalty

NOTES

Section 18, *Sub section* (7), as amended, provides, in the case of tax not deducted at source under sub sections (3 *D*) and (3-*E*), for its recovery from the company as well as from the principal officer

from such person unless satisfied that such person has wilfully failed to deduct and pay the tax

(8) The power to levy by deduction under this section shall be without prejudice to any other mode of recovery

OLD	NEW.
(9) Every person deducting income-tax or super-tax in accordance with the provisions of sub-section (3), (3-A), (3-B), (3-C) or (3-D), shall, at the time of payment of interest or dividends, furnish to the person to whom such payment is made a certificate to the effect that income-tax or super-tax has been deducted, and specifying the amount so deducted, the rate at which the tax has been deducted, and such other particulars as may be prescribed	(9) Every person deducting income-tax or super-tax in accordance with the provisions of sub-section (3), (3-*A*), (3-*B*), (3-*C*) (3-*D*) or (3-*E*), shall, *at the time of payment of the sum from which tax has been deducted,* furnish to the person to whom such payment is made a certificate to the effect that income-tax or super-tax has been deducted, and specifying the amount so deducted, the rate at which the tax has been deducted, and such other particulars as may be prescribed
19 In the case of income chargeable under any head other than "salaries" or "interest on securities", and in any case where income-tax has not been deducted in accordance with the provisions of section 18, the tax shall be payable by the assessee direct Payment in other cases	**19** *In the case of income in respect of which provision is not made under section 18 for deduction of income-tax at the time of payment, and in any case where income-tax has not been deducted in accordance with the provisions of section 18, income-tax shall be payable by the assessee direct* Payment in other cases

Supply of information regarding dividends

19-A The principal officer of every company shall, on or before the 15th day of June in each year, furnish to the prescribed officer a return in the prescribed form and verified in the prescribed manner of the names and of the addresses, as entered in the register of shareholders maintained by the company, of the shareholders to whom a dividend or aggregate dividends exceeding such amount as may be prescribed in this behalf has or have been distributed during the preceding year and of the amount so distributed to each such shareholder

NOTES

Section 19 is enlarged in consequence of the amendment of section 18 Income-tax shall be payable by the assessee direct if not deductable and deducted under section 18

20 The principal officer of every company shall, at the time of distribution of dividends, furnish to every person receiving a dividend a certificate to the effect that the company has paid or will pay income-tax on the profits which are being distributed, and specifying such other particulars as may be prescribed

Certificate by company to shareholders receiving dividends

OLD	NEW
20-A The person responsible for paying any interest not being "Interest on securities" shall, on or before the fifteenth day of June in each year, furnish to the prescribed officer a return in the prescribed form and verified in the prescribed manner of the names and addresses of all persons to whom during the previous financial year he has paid interest or aggregate interest exceeding such amount not being less than one thousand rupees as may be prescribed in this behalf, together with the amount paid to each such person	**20-A** The person responsible for paying any interest not being "Interest on securities" shall, on or before the fifteenth day of June in each year, furnish to the prescribed officer a return in the prescribed form and verified in the prescribed manner of the names and addresses of all persons to whom during the previous financial year he has paid interest or aggregate interest exceeding such amount not being less than *four hundred rupees* as may be prescribed in this behalf, together with the amount paid to each such person
Supply of information regarding interest	Supply of information regarding interest.
21 The prescribed person in the case of every Government office, and the principal officer or the prescribed person in the case of every local authority, company or other public body or association and every private employer shall prepare, and, within thirty days from the 31st day of March in each year, deliver or cause to be delivered to the Income-tax Officer in the prescribed form, a return in writing showing—	**21** The prescribed person in the case of every Government office, and the principal officer or the prescribed person in the case of every local authority, company or other public body or association, and every private employer shall prepare, and, within thirty days from the 31st day of March in each year, deliver or cause to be delivered to the Income-tax Officer in the prescribed form, *and verified in the prescribed manner,* a return in writing showing—
Annual return	Annual return
(*a*) the name and, so far as it is known, the address, of every	(*a*) the name and, so far as it is known, the address, of every

NOTES

Section 20 A reduces from Rs 1,000 to Rs 400 the minimum amount of the interest payment which the payer has under section 20 A to report annually to the Income tax Officer

Section 21 is amended so as to make the annual return of salaries of employees verifiable A penalty is provided in section 52

from such person unless satisfied that such person has wilfully failed to deduct and pay the tax

(8) The power to levy by deduction under this section shall be without prejudice to any other mode of recovery

OLD	NEW
(9) Every person deducting income-tax or super-tax in accordance with the provisions of sub-section (3), (3-A), (3-B), (3-C) or (3-D), shall, at the time of payment of interest or dividends, furnish to the person to whom such payment is made a certificate to the effect that income-tax or super-tax has been deducted, and specifying the amount so deducted, the rate at which the tax has been deducted, and such other particulars as may be prescribed	(9) Every person deducting income-tax or super-tax in accordance with the provisions of sub-section (3), (3-*A*), (3-*B*), (3-*C*) (3-*D*) or (3-*E*), shall, *at the time of payment of the sum from which tax has been deducted*, furnish to the person to whom such payment is made a certificate to the effect that income-tax or super-tax has been deducted, and specifying the amount so deducted, the rate at which the tax has been deducted, and such other particulars as may be prescribed
19 Payment in other cases. In the case of income chargeable under any head other than "salaries" or "interest on securities", and in any case where income-tax has not been deducted in accordance with the provisions of section 18, the tax shall be payable by the assessee direct	19 Payment in other cases. *In the case of income in respect of which provision is not made under section* 18 *for deduction of income-tax at the time of payment, and in any case where income-tax has not been deducted in accordance with the provisions of section* 18, *income-tax shall be payable by the assessee direct*

19-A Supply of information regarding dividends. The principal officer of every company shall, on or before the 15th day of June in each year, furnish to the prescribed officer a return in the prescribed form and verified in the prescribed manner of the names and of the addresses, as entered in the register of shareholders maintained by the company, of the shareholders to whom a dividend or aggregate dividends exceeding such amount as may be prescribed in this behalf has or have been distributed during the preceding year and of the amount so distributed to each such shareholder

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NOTES

Section 19 is enlarged in consequence of the amendment of section 18 Income-tax shall be payable by the assessee direct if not deductable and deducted under section 18

20. The principal officer of every company shall, at the time of distribution of dividends, furnish to every person receiving a dividend a certificate to the effect that the company has paid or will pay income-tax on the profits which are being distributed, and specifying such other particulars as may be prescribed.

Certificate by company to shareholders receiving dividends.

OLD	NEW
20-A. The person responsible for paying any interest not being "Interest on securities" shall, on or before the fifteenth day of June in each year, furnish to the prescribed officer a return in the prescribed form and verified in the prescribed manner of the names and addresses of all persons to whom during the previous financial year he has paid interest or aggregate interest exceeding such amount not being less than one thousand rupees as may be prescribed in this behalf, together with the amount paid to each such person. (Supply of information regarding interest.)	**20-A.** The person responsible for paying any interest not being "Interest on securities" shall, on or before the fifteenth day of June in each year, furnish to the prescribed officer a return in the prescribed form and verified in the prescribed manner of the names and addresses of all persons to whom during the previous financial year he has paid interest or aggregate interest exceeding such amount not being less than *four hundred rupees* as may be prescribed in this behalf, together with the amount paid to each such person. (Supply of information regarding interest.)
21. The prescribed person in the case of every Government office, and the principal officer or the prescribed person in the case of every local authority, company or other public body or association and every private employer shall prepare, and, within thirty days from the 31st day of March in each year, deliver or cause to be delivered to the Income-tax Officer in the prescribed form, a return in writing showing— (Annual return.)	**21.** The prescribed person in the case of every Government office, and the principal officer or the prescribed person in the case of every local authority, company or other public body or association, and every private employer shall prepare, and, within thirty days from the 31st day of March in each year, deliver or cause to be delivered to the Income-tax Officer in the prescribed form, *and verified in the prescribed manner* a return in writing showing— (Annual return.)
(*a*) the name and, so far as it is known the address, of every	(*a*) the name and, so far as it is known, the address, of every

NOTES

Section 20 A reduces from Rs. 1,000 to Rs. 400 the minimum amount of the interest payment which the payer has under section 20 A to report annually to the Income-tax Officer.

Section 21 is amended so as to make the annual return of salaries of employees verifiable. A penalty is provided in section 52.

OLD

person who was receiving on the said 31st day of March, or has received during the year ending on that date, from the authority, company, body, association or private employer, as the case may be, any income chargeable under the head "Salaries" of such amount as may be prescribed;

(b) the amount of the income so received by each such person, and the time or times at which the same was paid,

(c) the amount deducted in respect of income-tax from the income of each such person

22 Return of income (1) The principal officer of every company shall prepare, and, on or before the fifteenth day of June in each year, furnish to the Income-tax Officer a return, in the prescribed form and verified in the prescribed manner, of the total income of the company during the previous year

NEW

person who was receiving on the said 31st day of March, or has received *or to whom was due* during the year ending on that date, from the authority, company, body, association or private employer, as the case may be, any income chargeable under the head "Salaries" of such amount as may be prescribed,

(b) the amount of the income so received *or so due* by each such person, and the time or times at which the same was paid *or due, as the case may be,*

(c) the amount deducted in respect of income-tax *and super-tax* from the income of each such person

22 Return of income (1) *The Income-tax Officer shall, on or before the 1st day of May in each year give notice by publication in the press and by publication in the prescribed manner, requiring every person whose total income during the previous year exceeded the maximum amount which is not chargeable to income-tax to furnish, within such period not being less than sixty days as may be specified in the notice, a return, in the prescribed form and verified in the prescribed manner, setting forth (along with such other particulars as may be required by the notice) his total income and total world income during that year*

NOTES

"*Section* 22 (1), as amended, prescribes compulsory returns and section 22 (2) in consequence makes optional the issue by the Income-tax Officer of the notice, now compulsory, calling for a return of income This change in the law follows the United Kingdom law and it is intended as in the United Kingdom that the Income-tax Officer should (as he now does) issue notice to each person whom he believes to have an assessable income

OLD.	NEW
Provided that the Income-tax Officer may, in his discretion, extend the date for the delivery of the return in the case of any company or class of companies	*Provided that the Income-tax Officer may in his discretion extend the date for the delivery of the return in the case of any person or class of persons*
(2) In the case of any person other than a company whose total income is, in the Income-tax Officer's opinion of such an amount as to render such person liable to income-tax, the Income-tax Officer shall serve a notice upon him requiring him to furnish, within such period, not being less than thirty days, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) his total income during the previous year	(2) In the case of any person * * * * whose total income is, in the Income-tax Officer's opinion, of such an amount as to render such person liable to income-tax, the Income-tax Officer *may serve* a notice upon him requiring him to furnish, within such period, not being less than thirty days, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) his total income *and total world income* during the previous year
	Provided that the Income-tax Officer may in his discretion extend the date for the delivery of the return
(3) If any person has not furnished a return within the time allowed by or under sub-section (1) or sub-section (2), or having furnished a return under either of those sub-sections, discovers	(3) If any person has not furnished a return within the time allowed by or under sub-section (1) or sub-section (2), or having furnished a return under either of those sub-sections, discovers

NOTES

The object of the provision prescribing compulsory returns is to enable the Income-tax authorities to deal with defaulters who conceal the fact that they have taxable incomes It is not considered right that the onus of finding such persons should be on the Income-tax authorities and this provision coupled with the penalty provisions (section 28) and the extension of the time for initiating assessments (section 34) is designed to put the Income-tax authorities in a position to deal adequately with defaulters

Section 22 (3) allows an assessee to file a return or revised return before assessment is made and so to escape an assessment under section 23 (4) He is to retain this right [*see* section 23 (4)], but in order to prevent him escaping the consequences of submitting an original false return or evading the penalty for failure to submit a return, the closing words of this sub section have been omitted and a suitable proviso has been inserted in section 28

Section 22 (5), a new provision, takes the place of section 38 (3) which is deleted It is considered that these particulars should be furnished as part of the return of income ''—*Objects and Reasons*

OLD.	NEW
any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made, and any return so made shall be deemed to be a return made in due time under this section	any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made * * * *
(4) The Income-tax Officer may serve on the principal officer of any company or on any person upon whom a notice has been served under sub-section (2) a notice requiring him, on a date to be therein specified, to produce, or cause to be produced, such accounts or documents as the Income-tax Officer may require	(4) The Income-tax Officer may serve * * * * on any person *who has made a return under sub-section* (1) *or* upon whom a notice has been served under sub-section (2) a notice requiring him, on a date to be therein specified, to produce, or cause to be produced, such accounts or documents as the Income-tax Officer may require

Provided that the Income-tax Officer shall not require the production of any accounts relating to a period more than three years prior to the previous year

OLD.	NEW
	(5) *The prescribed form of the returns referred to in sub-sections* (1) *and* (2) *shall, in the case of an assessee engaged in any business, profession or vocation, require him to furnish particulars of the location and style of the principal place wherein he carries on the business, profession or vocation and of any branches thereof, the names and addresses of his partners, if any, in such business, profession or vocation and the extent of the*

NOTES.

In sub-section (1) of section 22 of the Act we have altered the wording so as to require the notice under that sub section to be published both in the press and also in the prescribed manner instead of allowing publication in either manner

It has been made clear to us that notwithstanding such publication of notices Government intend that notices shall as hitherto be served on all persons believed to have incomes liable to assessment —*Select Committee Report*

Section 22 (1) In the Assembly "sixty days" were substituted for "thirty days" and the proviso was added to give discretion to the Income-tax Officer to extend the date for delivery of the return Particulars of total world income are also to be given The section has been amended so as to do away with serving notices both under section 22 (1) and 22 (2) before calling for accounts

OLD	NEW.
	share of the assessee and the shares of all such partners in the profits of the business, profession or vocation and any branches thereof.
23 (1) If the Income-tax Officer is satisfied that a return made under section 22 is correct and complete, he shall assess the total income of the assessee, and shall determine the sum payable by him on the basis of such return Assessment	**23** (1) If the Income-tax Officer is satisfied *without requiring the presence of the assessee or the production by him of any evidence* that a return made under section 22 is correct and complete, he shall assess the total income of the assessee, and shall determine the sum payable by him on the basis of such return Assessment
(2) If the Income-tax Officer has reason to believe that a return made under section 22 is incorrect or incomplete, he shall serve on the person who made the return a notice requiring him, on a date to be therein specified, either to attend at the Income-tax Officer's office or to produce, or to cause to be there produced, any evidence on which such person may rely in support of the return	(2) If the Income-tax Officer *is not satisfied without requiring the presence of the person who made the return or the production of evidence that a return made under section 22 is correct and complete, he shall serve on such person* a notice requiring him, on a date to be therein specified, either to attend at the Income-tax Officer's office or to produce, or to cause to be there produced, any evidence on which such person may rely in support of the return

(3) On the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, the Income-tax Officer, after hearing such evidence as such person may produce and such other evidence as the Income-tax Officer may require, on specified points, shall, by an order in writing, assess the total income of the assessee, and determine the sum payable by him on the basis of such assessment

OLD	NEW.
(4) If the principal officer of any company or any other person fails to make a return under sub-section (1) or sub-section (2) of	(4) *If any person fails to make the return required by any notice given under sub-section* (2) *of section* 22 *and has not made a*

NOTES

Section 23, *Sub-section* (4) as amended, will not apply to a person who makes a return under section 22 (3) [see note on Section 22 (3) above] In the case of assessment under this sub-section there has hitherto been no provision in terms for refusal of registration to a firm This has now been remedied

OLD	NEW
section 22, as the case may be, or fails to comply with all the terms of a notice issued under sub-section (4) of the same section or, having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of this section, the Income-tax Officer shall make the assessment to the best of his judgment and, in the case of a registered firm, may cancel its registration	*return or a revised return under sub-section* (3) *of the same section,* or fails to comply with all the terms of a notice issued under sub-section (4) of the same section or, having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of this section, the Income-tax Officer shall make the assessment to the best of his judgment *and determine the sum payable by the assessee on the basis of such assessment* and, *in the case of a firm may refuse to register it or may cancel its registration if it is already registered*:

Provided that the registration of a firm shall not be cancelled until fourteen days have elapsed from the issue of a notice by the Income-tax Officer to the firm intimating his intention to cancel its registration

OLD	NEW
	(5) *Notwithstanding anything contained in the foregoing sub-sections, when the assessee is a firm and the total income of the firm has been assessed under sub-section* (1), *sub-section* (3) *or sub-section* (4), *as the case may be,—*
	(a) *in the case of a registered firm, the sum payable by the firm itself shall not be determined but the total income of each partner of the firm, including therein his share of its income, profits and gains of the previous year shall be assessed and the sum payable by him on the basis of such assessment shall be determined*

NOTES

Section 23, *Sub section* (5), a new sub section, provides that in the case of a registered firm the partners and not the firm are to be assessed and that the partners of an unregistered firm may be assessed in the same way if they are avoiding tax by non-registration A partner's share is to be his share of the previous year's profits and he may carry forward his share of loss The firm is to be assessed on a non resident partner's share

OLD.	NEW.
	Provided that if such share of any partner is a loss it shall be set off against his other income or carried forward and set off in accordance with the provisions of section 24. *Provided further that when any of such partners is a person not resident in British India his share of the income, profits and gains of the firm shall be assessed on the firm at the rates which would be applicable if it were assessed on him personally, and the sum so determined as payable shall be paid by the firm, and* (b) *in the case of an unregistered firm, the Income-tax Officer may instead of determining the sum payable by the firm itself proceed in the manner laid down in clause (a) as applicable to a registered firm, if, in his opinion, the aggregate amount of the tax including super-tax, if any, payable by the partners under such procedure would be greater than the aggregate amount which would be payable by the firm and the partners individually if the firm were assessed as an unregistered firm*
23-A (1) Where the Income-tax Officer is satisfied that any firm or other association of individuals carrying on any business, other than a Hindu undivided family or a company, is *Power to assess individual members of certain firms, associations and companies*	*Omitted.*

NOTES

Section 23-A Section 23 A of the Income tax Act, 1922, has proved practically a dead letter, mainly because it imposes upon an Income-tax Officer the duty of determining whether the profits and gains of a Company are allowed to accumulate beyond its reasonable needs, existing and contingent, having regard to the maintenance and development of its business The present clause substitutes a simple arithmetical criterion for the deter-

OLD	NEW.
under the control of one member thereof, and that such firm or association has been formed or is being used for the purpose of evading or reducing the liability to tax of any member thereof, he may, with the previous approval of the Assistant Commissioner, pass an order that the sum payable as income-tax by the firm or association shall not be determined, and thereupon the share of each member in the profits and gains of the firm or association shall be included in his total income for the purpose of his assessment thereon	
Explanation —A member of a firm or association who owns the whole or the major portion of the capital of the firm or association shall not by reason only of that fact be deemed to control the firm or association	

NOTES

mination of the applicability of the section to the circumstances of a Company in any year Subsidiary Companies, and Companies in which the public are substantially interested are still excluded from the operation of the section, but the opportunity has been taken to amend the definition of "Subsidiary Company" so as to remove any doubt as to the meaning of the expression "a company not being a company to which the provisions of this sub-section apply' The clause also alters the procedure under the section Instead of passing an order to the effect that the sum payable as income tax by the company shall not be determined and that the proportionate share of each member in the profits and gains of the Company shall be included in his total income, the Income-tax Officer has under the present clause merely to deem the profits of the Company to have been distributed as dividends on a given date The assessment of a Company to both income tax and super tax will therefore be made whether or not an order is passed under the section in its proposed new form —*Objects and Reasons*

The change made in the proviso covers cases where the accumulated undistributed profits exceed the value of the fixed assets or the paid up capital taken with loan capital belonging to shareholders, whichever is greater We have added an additional proviso in order to make allowance for possible cases of error in which though the full sixty per cent of the assessable income of the company has not been actually distributed, an amount exceeding fifty-five per cent has been distributed In such case we consider that the company should be given a reasonable opportunity of escaping the operation of the section by revising its distribution within three months The removal of the reference to subsidiary companies supplements the first change made in the section and secures the application of the section to all companies except companies in which the public are substantially interested in the sense defined in the *Explanation* The deletion of clause (*a*), (*c*) and (*d*) in the *Explanation* is consequential on the changes made in the main part of the sub section—*Select Committee Report*

Section 23 A —The substitution of a rough and ready rule to apply this section eliminates the canvassing of positions like that taken in *Harvey* v *Commissioner of Income tax*, (A I R 1935 Mad 1005, 69 M L J 577, 8 I T C 311, 1935 I T R 311)

OLD

(2) Where the Income-tax Officer is satisfied that a company is under the control of not more than five of its members and that its profits and gains are allowed to accumulate beyond its reasonable needs, existing and contingent, having regard to the maintenance and development of its business, without being distributed to the members, or that a reasonable part of its profits and gains, having regard to the said needs has not been distributed to its members in such manner as to render the amount distributed liable to be included in their total income, and that such accumulation or failure to distribute is for the purpose of preventing the imposition of tax upon any of the members in respect of their shares in the profits and gains so accumulated or not distributed, the Income-tax Officer may, with the previous approval of the Assistant Commissioner, pass an order that the sum payable as income-tax by the company shall not be determined, and thereupon the proportionate share of each member in the profits and gains of the company, whether such profits and gains have been distributed to the members or not, shall be included in the total income of such member for the purpose of his assessment thereon

NEW

Power to assess individual members of certain companies

23-A (1) *Where the Income-tax Officer is satisfied that in respect of any previous year the profits and gains distributed as dividends by any company up to the end of sixth month after its accounts for that previous year are laid before the company in general meeting increased by any income-tax payable thereon are less than sixty per cent of the assessable income of the company of that previous year, he shall, unless he is satisfied that having regard to the losses incurred by the company in earlier years or to the smallness of the profit made, the payment of a dividend or a larger dividend than that declared would be unreasonable, make with the previous approval of the Inspecting Assistant Commissioner an order in writing that the undistributed portion of the assessable income of the company of that previous year as computed for income-tax purposes shall be deemed to have been distributed as dividends amongst the shareholders as at the date of the general meeting aforesaid, and thereupon the proportionate share thereof of each shareholder shall be included in the total income of such share-*

NOTES

viz., whether there was an intention on the part of the shareholders to avoid payment of tax

23-A In the Assembly the words "or a larger dividend than that declared" have been added after dividend to make it clear that the section is not intended to affect those cases in which a company might quite rightly and fairly distribute less than 60 per cent but be running into danger if it attempted to distribute more

The words "assessable income" were substituted for "profits and gains" as the words "profits and gains" are much larger than "assessable income" The Proviso has been amended to make it clear that a company which is hundred per cent subsidiary of a parent public company shall be regarded as a public company

OLD.	NEW.
	holder for the purpose of assessing his total income:
	Provided that when the reserves representing accumulations of past profits which have not been the subject of an order under this sub-section exceed the paid up capital of the company, together with any loan capital which is the property of the shareholders, or the actual cost of the fixed assets of the company whichever of these is greater, this section shall apply as if instead of the words 'sixty per cent of the assessable income', the words 'one hundred per cent of the assessable income' were substituted
	Provided further that no order under this sub-section shall be made where the company has distributed not less than fifty-five per cent of the assessable income of the company, unless the company, on receipt of a notice from the Income-tax Officer that he proposes to make such an order fails to make within three months of the receipt of such notice a further distribution of its profits and gains so that the total distribution made is not less than sixty per cent of the assessable income of the company of the previous year concerned
Provided that this sub-section shall not apply to any company which is a subsidiary company or in which the public are substantially interested	*Provided further that this sub-section shall not apply to any company in which the public are substantially interested or to a subsidiary company of such a company if the whole of the share capital of such subsidiary company is held by the parent company or by the nominees thereof*
Explanation —For the purpose of this sub-section,—	*Explanation* —For the purpose of this sub-section,—

OLD	NEW.
(*a*) a company shall be deemed to be a subsidiary company if, by reason of the beneficial ownership of shares therein, the control of the company is in the hands of a company, not being a company to which the provisions of this sub-section apply, or of two or more companies none of which is a company to which those provisions apply,	*Omitted*
(*b*) a company shall be deemed to be a company in which the public are substantially interested if shares of the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than twenty-five per cent of the voting power have been allotted unconditionally to, or acquired unconditionally by, and are at the end of the previous year beneficially held by, the public (not including a company to which the provisions of this sub-section apply), and if any such shares have in the course of such previous year been the subject of dealings in any stock exchange in British India or are in fact freely transferable by the holders to other members of the public,	* * a company shall be deemed to be a company in which the public are substantially interested if shares of the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than twenty-five per cent of the voting power have been allotted unconditionally to, or acquired unconditionally by, and are at the end of the previous year beneficially held by, the public (not including a company to which the provisions of this sub-section apply), and if any such shares have in the course of such previous year been the subject of dealings in any stock exchange in British India or are in fact freely transferable by the holders to other members of the public
(*c*) unless the contrary is proved, a company shall be deemed to be under the control of any persons where the majority of the voting power or shares is in the hands of those persons or of relatives or nominees of those persons	*Omitted*
(*d*) "nominee" means a person who may be required to exercise his voting power on the directions of, or holds shares directly or indirectly on behalf of, another person	*Omitted*

OLD	NEW
(3) The Assistant Commissioner shall not give his approval to any order proposed to be passed by the Income-tax Officer under this section until he has given the firm, association or company concerned an opportunity of being heard	(2) The *Inspecting* Assistant Commissioner shall not give his approval to any order proposed to be passed by the Income-tax Officer under this section until he has given the * * company concerned an opportunity of being heard
(4) (*i*) Where any member of a firm or association of individuals makes default in the payment of tax on his share of profits and gains which has been included in his total income under the provisions of sub-section (1) such tax may be recovered from the firm or association, as the case may be	(3) (*i*) *Omitted*
(*ii*) Where the proportionate share of any member of a company in the undistributed profits and gains of the company has been included in his total income under the provisions of sub-section (2), the tax payable in respect thereof shall be recoverable from the company and may be recovered from such member, if there are not sufficient funds in the hands of the company to pay the tax, or if the winding up of the company has commenced	(3) (*ii*) Where the proportionate share of any member of a company in the undistributed profits and gains of the company has been included in his total income under the provisions of *sub-section* (1), the tax payable in respect thereof shall be recoverable from the company *if it cannot be recovered from such member*
(*iii*) Where tax is recoverable from a company, firm or other association under this sub-section, a notice of demand shall be served upon it in the prescribed form showing the sum so payable, and such company, firm or association shall be deemed to be the assessee in respect of such sum, for the purposes of Chapter VI	(*iii*) Where tax is recoverable from a company, * * * under this sub-section, a notice of demand shall be served upon it in the prescribed form showing the sum so payable, and such company, * * * shall be deemed to be the assessee in respect of such sum, for the purposes of Chapter VI
(5) Where tax has been paid in respect of any undistributed profits and gains of a company under this section, and such profits and gains are subsequently distributed	(4) Where tax has been paid in respect of any undistributed profits and gains of a company under this section, and such profits and gains are subsequently

OLD	NEW
in any year, the proportionate share therein of any member of the company shall be excluded in computing his total income of that year	distributed in any year, the proportionate share therein of any member of the company shall be excluded in computing his total income of that year
	(5) *When a company is a shareholder deemed under sub-section (1) to have received a dividend, the amount of the dividend thus deemed to have been paid to it shall be deemed to be part of its total income for the purpose also of the application of that sub-section to distributions of profits by that company*

24 (1) Where any assessee sustains a loss of profits or gains in any year under any of the heads mentioned in section 6, he shall be entitled to have the amount of the loss set off against his income, profits or gains under any other head in that year

Set-off of loss in computing aggregate income

OLD	NEW
	Provided that where the assessee is an unregistered firm which has not been assessed under the provisions of clause (b) of sub-section (5) of section 23 in the manner applicable to a registered firm, any such loss shall be set off only against the income.

NOTES

Section 24, makes a major change in the whole scheme of the Act by allowing the carry forward of losses

Sub section (1) is amended by a proviso which does not allow any of the partners of an unregistered firm to set off any part of the firm's loss against their incomes In the case of a registered firm the loss that cannot be set off in the firm's assessment shall be apportioned amongst the partners who alone will be entitled to set off the loss

Sub section (2) allows losses in a business, profession or vocation to be carried forward and set off against the profits of the *same business, profession or vocation* The period of carry forward is to be six years but to mitigate the effect on the revenue of this concession losses of the first "previous year" after the commencement of the Amending Act are to be carried forward for one year, losses of the next year for 2 years, and so on until the full period of 6 years is reached

The provisions regarding registered and unregistered firms in sub section (1) are *mutatis mutandis* repeated in sub-section (2) and in accordance with the principle given effect to elsewhere that the liability or benefit should attach to the person receiving the profits or incurring the loss it is provided that in the case of a change in a firm's constitution or of a succession only the person incurring the loss will be able to set it off

Sub section (5) provides for the computation of the loss in an order in writing and its communication to the assessee—*Objects and Reasons*

OLD.	NEW.
	profits and gains of the firm and not against the income, profits and gains of any of the partners of the firm, and where the assessee is a registered firm, any loss which cannot be set off against other income, profits and gains of the firm shall be apportioned between the partners of the firm and they alone shall be entitled to have the amount of the loss set off under this section
(2) Where the assessee is a registered firm, and the loss sustained cannot wholly be set off under sub-section (1), any member of such firm or any person who being a minor has been admitted to the benefits of partnership in such firm shall be entitled to have set off against any income, profits or gains of the year in which the loss was sustained in respect of which the tax is payable by him such amount of the loss not already set off as is proportionate to his share in the firm or to his share of the benefits of partnership, as the case may be	(2) *Where any assessee sustains a loss of profits or gains in any year, being a previous year not earlier than the previous year for the assessment for the year ending on the* 31*st day of March,* 1940, *under the head "Profits and gains of business, profession or vocation", and the loss cannot be wholly set off under sub-section* (1), *the portion not so set off shall be carried forward to the following year and set off against the profits and gains, if any, of the assessee from the same business, profession or vocation for that year, and if it cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following year, and so on, but no loss shall be so carried forward for more than six years, and a loss arising in the previous years for the assessment for the years ending on the* 31*st day of March* 1940, *the* 31*st day of March,* 1941, *the* 31*st day of March,* 1942, *the* 31*st day of March,* 1943, *and the* 31*st day of March,* 1944, *respectively shall*

NOTES

In sub section (2) of section 24 of the Act as amended by this clause, the words now inserted rectify an omission The sub-section as drafted in the Bill failed to render impossible claims based upon losses sustained many years before the present changes in the law— *Select Committee Report*

OLD.	NEW
	be carried forward only for one, two, three, four and five years respectively.
	Provided that nothing herein contained shall entitle any assessee, being a registered firm, to have carried forward and set off any loss which has been apportioned between the partners, under the proviso to sub-section (1), or entitle any assessee, being a partner in an unregistered firm which has not been assessed under the provisions of clause (b) of sub-section (5) of section 23 in the manner applicable to a registered firm, to have carried forward and set off against his own income any loss sustained by the firm
	Provided further that where an unregistered firm is assessed as a registered firm under clause (b) of sub-section (5) of section 23, during any year, its losses shall also be carried forward and set off under this section as if it were a registered firm
	Provided further that where a change has occurred in the constitution of a firm or where any person carrying on any business, profession or vocation has been succeeded in such capacity by another person, otherwise than by inheritance, nothing in this section shall be deemed to entitle any person other than the person incurring the loss to have it set off

NOTES

Section 24 (2) *last proviso* —The words "otherwise than by inheritance" have been added so that carrying forward of losses should not die with the individual in cases of inheritance especially in view of the fact that when a person inherits a business he is liable to pay the debts of that business incurred by the father out of the assets that come into his hands

OLD.

(2) Where the assessee is a registered firm, and the loss sustained cannot wholly be set off under sub-section (1), any member of such firm or any person who being a minor has been admitted to the benefits of partnership in such firm shall be entitled to have set off against any income, profits or gains of the year in which the loss was sustained in respect of which the tax is payable by him such amount of the loss not already set off as is proportionate to his share in the firm or to his share of the benefits of partnership, as the case may be

NEW

profits and gains of the firm and not against the income, profits and gains of any of the partners of the firm, and where the assessee is a registered firm, any loss which cannot be set off against other income, profits and gains of the firm shall be apportioned between the partners of the firm and they alone shall be entitled to have the amount of the loss set off under this section

(2) *Where any assessee sustains a loss of profits or gains in any year, being a previous year not earlier than the previous year for the assessment for the year ending on the* 31*st day of March,* 1940, *under the head "Profits and gains of business, profession or vocation", and the loss cannot be wholly set off under sub-section* (1), *the portion not so set off shall be carried forward to the following year and set off against the profits and gains, if any, of the assessee from the same business, profession or vocation for that year, and if it cannot be wholly so set off the amount of loss not so set off shall be carried forward to the following year, and so on, but no loss shall be so carried forward for more than six years, and a loss arising in the previous years for the assessment for the years ending on the* 31*st day of March,* 1940, *the* 31*st day of March,* 1941, *the* 31*st day of March,* 1942, *the* 31*st day of March,* 1943, *and the* 31*st day of March,* 1944, *respectively shall*

NOTES

In sub section (2) of section 24 of the Act as amended by this clause, the words now inserted rectify an omission The sub-section as drafted in the Bill failed to render impossible claims based upon losses sustained many years before the present changes in the law—*Select Committee Report*

OLD	NEW
the deceased person any accounts, documents or other evidence which he might under the provisions of sections 22 and 23 have required from the deceased person	*the deceased person had he survived,* require from the executor, administrator or other legal representative of the deceased person any accounts, documents or other evidence which he might under the provisions of sections 22 and 23 have required from the deceased person

25 (1) Where any business, profession or vocation on which income-tax was not at any time charged under the provisions of the Indian Income tax Act, 1918, is discontinued in any year, an assessment may be made in that year on basis of the income, profits or gains of the period between the end of the previous year and the date of such discontinuance in addition to the assessment, if any, made on the basis of the income, profits or gains of the previous year

Assessment in case of discontinued business

(2) Any person discontinuing any such business, profession or vocation shall give to the Income-tax Officer notice of such discontinuance within fifteen days thereof, and, where any person fails to give the notice required by this sub-section, the Income-tax Officer may direct that a sum shall be recovered from him by way of penalty not exceeding the amount of tax subsequently assessed on him in respect of any income, profits or gains of the business profession or vocation up to the date of its discontinuance

OLD	NEW
(3) Where any business, profession or vocation on which tax was at any time charged under the provisions of the Indian Income-tax Act, 1918, is discontinued, no tax shall be payable in respect of the income, profits and gains of the period between the end of the previous year and the date of such discontinuance, and the assessee may further claim	(3) Where any business, profession or vocation on which tax was at any time charged under the provisions of the Indian Income-tax Act, 1918, is discontinued, *then, unless there has been a succession by virtue of which the provisions of sub-section* (4) *have been rendered applicable,* no tax shall be payable in respect of the income, profits and gains of the

Section 25 —*Sub-section* (3) is amended and a new sub-section (4) is added so as to give to the first successor to a business, profession or vocation after the commencement of the amending Act the benefit now given by section 3 to the owner of a discontinued business assessed under the 1918 Act That benefit, *viz* , being allowed to substitute the profits from the end of the previous year up to the date of discontinuance for the profits of the previous year, is given because otherwise those assessed under the 1918 Act would be assessed for one year more than the number of years the business was in existence Since Section 26 provides that whenever there is a succession the predecessor shall be assessed on the previous year's profits it is necessary to give this relief to the predecessor in the case of succession to a business assessed under the 1918 Act

24-B (1) Where a person dies, his executor, administrator or other legal representative shall be liable to pay *out of the estate of the deceased person to the* extent to which the estate is capable of meeting the charge the tax assessed as payable by such person, or any tax which would have been payable by him under this Act if he had not died

Tax of deceased person payable by representative

OLD	NEW
(2) Where a person dies before he is served with a notice under sub-section (2) of section 22 or section 34, as the case may be, the Income-tax Officer may serve on his executor, administrator or other legal representative a notice under sub-section (2) of section 22 or under section 34, as the case may be, and may proceed to assess the total income of the deceased person as if such executor, administrator or other legal representative were the assessee	(2) *Where a person dies before the publication of the notice referred to in sub-section* (1) *of section* 22 *or before he is served with a notice under sub-section* (2) *of section* 22 *or section* 34, *as the case may be, his executor, administrator or other legal representative shall, on the serving of the notice under sub-section* (2) *of section* 22 *or under section* 34, *as the case may be, comply therewith, and the Income-tax Officer may proceed to assess the total income of the deceased person as if such executor, administrator or other legal representative were the assessee*
(3) Where a person dies, without having furnished a return which he has been required to furnish under the provisions of sub-section (2) of section 22, or having furnished a return which the Income-tax Officer has reason to believe to be incorrect or incomplete, the Income-tax Officer may make an assessment of the total income of such person and determine the tax payable by him on the basis of such assessment, and for this purpose may require from the executor, administrator or other legal representative of	(3) Where a person dies, without having furnished a return which he has been required to furnish under provisions * * * of section 22 or having furnished a return which the Income-tax Officer has reason to believe to be incorrect or incomplete, the Income-tax Officer may make an assessment of the total income of such person and determine the tax payable by him on the basis of such assessment, and for this purpose may *by the issue of the appropriate notice which would have had to be served upon*

NOTES

Section 24 *B* —Is amended in consequence of the amendment of section 22 (1) *prescribing compulsory returns of income* The omission made in sub section (2) of section 24-B of the Act ensures that the executor, administrator or other legal representative can only be assessed after he has been served with a specific notice under sub section (2) of section 22

OLD	NEW
the deceased person any accounts, documents or other evidence which he might under the provisions of sections 22 and 23 have required from the deceased person	*the deceased person had he survived,* require from the executor, administrator or other legal representative of the deceased person any accounts, documents or other evidence which he might under the provisions of sections 22 and 23 have required from the deceased person

Assessment in case of discontinued business

25 (1) Where any business, profession or vocation on which income-tax was not at any time charged under the provisions of the Indian Income tax Act, 1918, is discontinued in any year, an assessment may be made in that year on basis of the income, profits or gains of the period between the end of the previous year and the date of such discontinuance in addition to the assessment, if any, made on the basis of the income, profits or gains of the previous year

(2) Any person discontinuing any such business, profession or vocation shall give to the Income-tax Officer notice of such discontinuance within fifteen days thereof, and, where any person fails to give the notice required by this sub-section, the Income-tax Officer may direct that a sum shall be recovered from him by way of penalty not exceeding the amount of tax subsequently assessed on him in respect of any income, profits or gains of the business profession or vocation up to the date of its discontinuance

OLD	NEW
(3) Where any business, profession or vocation on which tax was at any time charged under the provisions of the Indian Income-tax Act, 1918, is discontinued, no tax shall be payable in respect of the income, profits and gains of the period between the end of the previous year and the date of such discontinuance, and the assessee may further claim	(3) Where any business, profession or vocation on which tax was at any time charged under the provisions of the Indian Income-tax Act, 1918, is discontinued, *then, unless there has been a succession by virtue of which the provisions of sub-section* (4) *have been rendered applicable,* no tax shall be payable in respect of the income, profits and gains of the

Section 25 —Sub-section (3) is amended and a new sub-section (4) is added so as to give to the first successor to a business, profession or vocation after the commencement of the amending Act the benefit now given by section 3 to the owner of a discontinued business assessed under the 1918 Act That benefit, *viz* , being allowed to substitute the profits from the end of the previous year up to the date of discontinuance for the profits of the previous year, is given because otherwise those assessed under the 1918 Act would be assessed for one year more than the number of years the business was in existence Since Section 26 provides that whenever there is a succession the predecessor shall be assessed on the previous year's profits it is necessary to give this relief to the predecessor in the case of succession to a business assessed under the 1918 Act

OLD

that the income, profits and gains of the previous year shall be deemed to have been the income, profits and gains of the said period Where any such claim is made, an assessment shall be made on the basis of the income, profits and gains of the said period, and if an amount of tax has already been paid in respect of the income, profits and gains of the previous year exceeding the amount payable on the basis of such assessment, a refund shall be given of the difference

NEW

period between the end of the previous year and the date of such discontinuance, and the assessee may further claim that the income, profits and gains of the previous year shall be deemed to have been the income, profits and gains of the said period Where any such claim is made, an assessment shall be made on the basis of the income, profits and gains of the said period, and if an amount of tax has already been paid in respect of the income, profits and gains of the previous year exceeding the amount payable on the basis of such assessment, a refund shall be given of the difference

(4) *Where the person who was at the commencement of the Indian Income-tax (Amendment) Act,* 1939, *carrying on any business, profession or vocation on which tax was at any time charged under the provisions of the Indian Income-tax Act,* 1918, *is succeeded in such capacity by another person, the change not being merely a change in the constitution of a partnership, no tax shall be payable by the first mentioned person in respect of the income, profits and gains of the period between the end of the previous year and the date of such succession, and such person may further claim that the income, profits and gains of the previous year shall be deemed to have been the income, profits and gains of the said period Where any such claim is made, an assessment shall be made on the basis of the income, profits and gains of the said period, and, if an amount of tax has already been paid in respect of the income, pro-*

OLD.

(4) Where an assessment is to be made under sub-section (1) or sub-section (3), the Income-tax Officer may serve on the person whose income, profits and gains are to be assessed, or, in the case of a firm, on any person who was a member of such firm at the time of its discontinuance, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section

25-A (1) Where, at the time of making an assessment under section 23, it is claimed by or on behalf of any member of a Hindu family hitherto assessed as

Assessment after partition of a Hindu undivided family

NEW.

fits and gains of the previous year exceeding the amount payable on the basis of such assessment, a refund shall be given of the difference

(5) *No claim to the relief afforded under sub-section* (3) *or sub-section* (4) *shall be entertained unless it is made before the expiry of one year from the date on which the business, profession or vocation was discontinued or the succession took place, as the case may be*

(6) Where an assessment is to be made under *sub-section* (1), *sub-section* (3) *or sub-section* (4), the Income-tax Officer may serve on the person whose income, profits and gains are to be assessed, or, in the case of a firm, on any person who was a member of such firm at the time of its discontinuance, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section

25-A (1) Where, at the time of making an assessment under section 23, it is claimed by or on behalf of any member of a Hindu family hitherto assessed as undivided

Assessment after partition of a Hindu undivided family

NOTES

...on (5) prescribes a period of limitation for claims under sub-sections (3)

...—Is amended so as to give effect to the principle (given effect to ...tion 26) that the assessment on the profits of the previous year should ... received the profits—in this case the disrupted Hindu

OLD	NEW
that the income, profits and gains of the previous year shall be deemed to have been the income, profits and gains of the said period Where any such claim is made, an assessment shall be made on the basis of the income, profits and gains of the said period, and if an amount of tax has already been paid in respect of the income, profits and gains of the previous year exceeding the amount payable on the basis of such assessment, a refund shall be given of the difference	period between the end of the previous year and the date of such discontinuance, and the assessee may further claim that the income, profits and gains of the previous year shall be deemed to have been the income, profits and gains of the said period Where any such claim is made, an assessment shall be made on the basis of the income, profits and gains of the said period, and if an amount of tax has already been paid in respect of the income, profits and gains of the previous year exceeding the amount payable on the basis of such assessment, a refund shall be given of the difference (4) *Where the person who was at the commencement of the Indian Income-tax (Amendment) Act,* 1939, *carrying on any business, profession or vocation on which tax was at any time charged under the provisions of the Indian Income-tax Act,* 1918, *is succeeded in such capacity by another person, the change not being merely a change in the constitution of a partnership, no tax shall be payable by the first mentioned person in respect of the income, profits and gains of the period between the end of the previous year and the date of such succession, and such person may further claim that the income, profits and gains of the previous year shall be deemed to have been the income, profits and gains of the said period Where any such claim is made, an assessment shall be made on the basis of the income, profits and gains of the said period, and, if an amount of tax has already been paid in respect of the income, pro-*

OLD

(4) Where an assessment is to be made under sub-section (1) or sub-section (3), the Income-tax Officer may serve on the person whose income, profits and gains are to be assessed, or, in the case of a firm, on any person who was a member of such firm at the time of its discontinuance, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section

Assessment after partition of a Hindu undivided family

25-A (1) Where, at the time of making an assessment under section 23, it is claimed by or on behalf of any member of a Hindu family hitherto assessed as

NEW.

fits and gains of the previous year exceeding the amount payable on the basis of such assessment, a refund shall be given of the difference

(5) *No claim to the relief afforded under sub-section* (3) *or sub-section* (4) *shall be entertained unless it is made before the expiry of one year from the date on which the business, profession or vocation was discontinued or the succession took place, as the case may be*

(6) Where an assessment is to be made under *sub-section* (1), *sub-section* (3) *or sub-section* (4), the Income-tax Officer may serve on the person whose income, profits and gains are to be assessed, or, in the case of a firm, on any person who was a member of such firm at the time of its discontinuance, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section

Assessment after partition of a Hindu undivided family

25-A (1) Where, at the time of making an assessment under section 23, it is claimed by or on behalf of any member of a Hindu family hitherto assessed as undivided

NOTES

Sub section (5) prescribes a period of limitation for claims under sub sections (3) and (4)

Section 25 A—Is amended so as to give effect to the principle (given effect to elsewhere, *e g*, section 26) that the assessment on the profits of the previous year should be made on the person who received the profits—in this case the disrupted Hindu undivided family

undivided that a partition has taken place among the members of such family, the Income-tax Officer shall make such inquiry thereinto as he may think fit, and, if he is satisfied that a separation of the members of the family has taken place and that the joint family property has been partitioned among the various members or groups of members in definite portions he shall record an order to that effect:

that a partition has taken place among the members of such family, the Income-tax Officer shall make such inquiry thereinto as he may think fit, and, if he is satisfied * * * that the joint family property has been partitioned among the various members or groups of members in definite portions he shall record an order to that effect

Provided that no such order shall be recorded until notices of the inquiry have been served on all the members of the family

(2) Where such an order has been passed, the Income-tax Officer shall make an assessment of the total income received by or on behalf of the joint family as such, as if no separation or partition had taken place, and each member or group of members shall, in addition to any income-tax for which he or it may be separately liable and notwithstanding anything contained in sub-section (1) of section 14, be liable for a share of the tax on the income so assessed according to the portion of the joint family property allotted to him or it;

(2) Where such an order has been passed, *or where any person has succeeded to a business, profession or vocation formerly carried on by a Hindu undivided family whose joint family property has been partitioned on or after the last day on which it carried on such business profession or vocation,* the Income-tax Officer shall make an assessment of the total income received by or on behalf of the joint family as such, as if no * * * partition had taken place, and each member or group of members shall, in addition to any income-tax for which he or it may be separately liable and notwithstanding anything contained in sub-section (1) of section 14, be liable for a share of the tax on the income so assessed according to the portion of the joint family property allotted to him or it;

and the Income-tax Officer shall make assessments accord-

and the Income-tax Officer shall make assessments accord-

NOTES

Section 25-A —(1) The words "that a separation of the members of the family has taken place" have been omitted The object is that if there has been a declaration of intention to separate that will be sufficient provided the Income tax Officer is otherwise satisfied and that there need not be partition or separation by metes and bounds

OLD	NEW
ingly on the various members and groups of members in accordance with the provisions of section 23	ingly on the various members and groups of members in accordance with the provisions of section 23:
Provided that all the separated members and groups of members shall be liable jointly and severally for the tax assessed on the total income received by or on behalf of the joint family as such	Provided that all the *members and groups of members whose joint family property has been partitioned* shall be liable jointly and severally for the tax assessed on the total income received by or on behalf of the joint family as such

(3) Where such an order has not been passed in respect of a Hindu family hitherto assessed as undivided, such family shall be deemed, for the purposes of this Act, to continue to be a Hindu undivided family

OLD	NEW
26 (1) Where, at the time of making an assessment under section 23, it is found that a change has occurred in the constitution of a firm or that a firm has been newly constituted, the assessments on the firm and on the members thereof shall, subject to the provisions of this Act, be made as if the firm had been constituted throughout the previous year as it is constituted at the time of making the assessment, and as if each member had received a share of the profits of that year proportionate to his interest in the firm at the time of making the assessment	**26** (1) Where, at the time of making an assessment under section 23, it is found that a change has occurred in the constitution of a firm or that a firm has been newly constituted, *the assessment shall be made on the firm as constituted* at the time of making the assessment
Change in constitution of a firm	Change in constitution of a firm

NOTES

Section 26 — Is amended by giving effect to the principle mentioned in the preceding section In cases where a firm has changed its constitution or has been newly constituted or where there has been a succession to a business, profession or vocation except in the case of an unregistered firm (where the partners entitled to the profits get credit for the tax paid) the persons who are entitled to receive the profits are to be assessed on them Provision is made for assessment on and recovery of tax from the successor in the case where the predecessor cannot be found or where he will not or cannot pay the tax

The words added to the proviso to sub section (2) of section 26 of the Act give an explicit right to the person by whom tax properly payable by another is paid to recover any amount so paid from that other person

OLD	NEW
	Provided that the income, profits and gains of the previous year shall, for the purpose of inclusion in the total incomes of the partners, be apportioned between the partners who in such previous year were entitled to receive the same
	Provided further that when the tax assessed upon a partner cannot be recovered from him it shall be recovered from the firm as constituted at the time of making the assessment
(2) Where, at the time of making an assessment under section 23, it is found that the person carrying on any business, profession or vocation has been succeeded in such capacity by another person, the assessment shall be made on such person succeeding, as if he had been carrying on the business, profession or vocation throughout the previous year, and as if he had received the whole of the profits for that year	(2) *Where a person carrying on any business, profession or vocation has been succeeded in such capacity by another person, such person and such other person shall, subject to the provisions of sub-section* (4) *of section* 25, *each be assessed in respect of his actual share, if any of the income, profits and gains of the previous year*
	Provided that, when the person succeeded in the business, profession or vocation cannot be found, the assessment of the profits of the year in which the succession took place up to the date of succession, and for the year preceding that year shall be made on the person succeeding him in like manner and to the same amount as it would have been made on the person succeeded or when the tax in respect of the assessment made for either of such years assessed on the person succeeded cannot be recovered from him, it shall be payable by and recoverable from the person succeeding, and such person shall be entitled

OLD. | **NEW.**

(New) *to recover from the person succeeded the amount of any tax so paid*

26-A (1) Application may be made to the Income-tax Officer on behalf of any firm, constituted under an instrument of partnership specifying the individual shares of the partners, for registration for the purposes of this Act and of any other enactment for the time being in force relating to income-tax or super-tax.

Procedure in registration of firms

(2) The application shall be made by such person or persons, and at such times and shall contain such particulars and shall be in such form, and be verified in such manner, as may be prescribed, and it shall be dealt with by the Income-tax Officer in such manner as may be prescribed

OLD.

27. Where an assessee or, in the case of a company, the principal officer thereof, within one month from the service of a notice of demand issued as hereinafter provided, satisfies the Income-tax Officer that he was prevented by sufficient cause from making the return required by section 22, or that he did not receive the notice issued under sub-section (4) of section 22, or sub-section (2) of section 23, or that he had not a reasonable opportunity to comply, or was prevented by sufficient cause from complying, with the terms of the last-mentioned notices, the Income-tax Officer shall cancel the assessment and proceed to make a fresh assessment in accordance with the provisions of section 23

Cancellation of assessment when cause is shown

28 (1) If the Income-tax

NEW.

27 Where an assessee * * * within one month from the service of a notice of demand issued as hereinafter provided, satisfies the Income-tax Officer that he was prevented by sufficient cause from making the return required by section 22, or that he did not receive the notice issued under sub-section (4) of section 22, or sub-section (2) of section 23, or that he had not a reasonable opportunity to comply, or was prevented by sufficient cause from complying, with the terms of the last-mentioned notices, the Income-tax Officer shall cancel the assessment and proceed to make a fresh assessment in accordance with the provisions of section 23

Cancellation of assessment when cause is shown

***28** (1) *If the Income-tax*

NOTES

* After Part II of the Indian Income-tax (Amendment) Act—Act VII of 1939—comes into force the section will have to be read with the following amendments —[see p 1]

Amendment Act section 86 —In section 28 of the said Act,—

(a) in sub section (1) and sub section (2), for the words "or the Commissioner" the words "or the Appellate Tribunal", and for the words "he may direct" the words "he or it may direct" shall be substituted

(b) in sub-section (5), for the words "or a Commissioner who has made" the words "or the Appellate Tribunal on making" shall be substituted

Section 28 —Important changes are made in section 28—a penalty section—which are

OLD	NEW
Penalty for concealment of income or improper distribution of profits — Officer, the Assistant Commissioner or the Commissioner, in the course of any proceedings under this Act, is satisfied that an assessee has concealed the particulars of his income or has deliberately furnished inaccurate particulars of such income, and has thereby returned it below its real amount, he may direct that the assessee shall, in addition to the income-tax payable by him, pay by way of penalty a sum not exceeding the amount of the income-tax which would have been avoided if the income so returned by the assessee had been accepted as the correct income	Penalty for concealment of income or improper distribution of profits — *Officer, the Appellate Assistant Commissioner or the Commissioner, in the course of any proceedings under this Act, is satisfied that any person—* *(a) has without reasonable cause failed to furnish the return of his total income which he was required to furnish by notice given under sub-section (1) or sub-section (2) of section 22 or section 34 or has without reasonable cause failed to furnish it within the time allowed and in the manner required by such notice, or* *(b) has without reasonable cause failed to comply with a notice under sub-section (4) of section 22 or sub-section (2) of section 23, or* *(c) has concealed the particulars of his income or deliberate-*

NOTES

designed to give the Income-tax Department more effective means of dealing with illegal evasion The penalty is increased from the amount of the tax avoided to twice that amount, it is to include super-tax as well as income-tax and it is to be imposable for failure to file a return or to submit accounts or to submit other evidence in support of a return To prevent hardship in the case of a person with no income liable to tax the penalty is limited to Rs 50 and in the case of the agent of a non resident the penalty for failure to file a return can only follow the issue of a specific notice calling for a return Provision is also made [proviso (c) to sub-section (1)] to prevent an assessee scenting penalty proceedings from avoiding them by the submission of a return —*Objects and Reasons*

In the proposed new sub section (1) of section 28 of the Act we have provided that accidental failure to furnish the returns referred to shall not be visited with penalty, and by our changes in the proviso to the sub-section we have restricted the penalty for failure to comply with the general notice under sub-section (1) of section 22 of the Act to assessees whose income is not less than three thousand five hundred rupees, and we have reduced to a maximum of twenty-five rupees the penalty for failure to comply with the notice under section 22 (2) of the Act where the person failing is proved to have no income liable to tax We have omitted clause (c) of the proviso contained in the Bill as introduced in the belief that it is unnecessary —*Select Committee Report*

Assembly

28 (1) (c) The penalty is lessened from twice the amount to "one and a half times"

28 (6) has been added making the previous approval of the Inspecting Assistant Commissioner necessary before penalty can be levied

See also notes in section 5

OLD.	NEW.
	ly furnished inaccurate particulars of such income, *he may direct that such person shall pay by way of penalty, in the case referred to in clause (a), in addition to the amount of the income-tax and super-tax, if any, payable by him, a sum not exceeding one and a half times that amount, and in the cases referred to in clauses (b) and (c), in addition to any tax payable by him, a sum not exceeding one and a half times the amount of the income-tax and super-tax, if any, which would have been avoided if the income as returned by such person had been accepted as the correct income* *Provided that—* (a) *no penalty for failure to furnish the return of his total income shall be imposed on an assessee whose total income is less than three thousand five hundred rupees unless he has been served with a notice under sub-section (2) of section 22;* (b) *where a person has failed to comply with a notice under sub-section (2) of section 22, or section 34 and proves that he has no income liable to tax, the penalty imposable under this sub-section shall be a penalty not exceeding twentyfive rupees;* (c) *no penalty shall be imposed under this sub-section upon any person assessable under section 42 as the agent of a person not resident in British India for failure to furnish the return required under section 22 unless a notice under sub-section (2) of that section or under section 34 has been served on him*

OLD.

(2) If the Income-tax Officer, the Assistant Commissioner or the Commissioner, in the course of any proceedings under this Act, is satisfied that the profits of a registered firm have been distributed otherwise than in accordance with the shares of the partners as shown in the instrument of partnership registered under this Act governing such distribution, and that any partner has thereby returned his income below its real amount, he may direct that such partner shall, in addition to the income-tax payable by him, pay by way of penalty a sum not exceeding the amount of income-tax which has been avoided, or would have been avoided if the income returned by such partner had been accepted as his correct income, and no refund or other adjustment shall be claimable by any other partner by reason of such direction

NEW.

(2) If the Income-tax Officer, the *Appellate Assistant Commissioner* or the Commissioner, in the course of any proceedings under this Act, is satisfied that the profits of a registered firm have been distributed otherwise than in accordance with the shares of the partners as shown in the instrument of partnership registered under this Act governing such distribution, and that any partner has thereby returned his income below its real amount, he may direct that such partner shall, *in addition to the income-tax and super-tax, if any, payable by him,* pay by way of penalty a sum *not exceeding one and half times the amount of income-tax and super-tax* which has been avoided, or would have been avoided if the income returned by such partner had been accepted as his correct income; and no refund or other adjustment shall be claimable by any other partner by reason of such direction

(3) No order shall be made under sub-section (1) or sub-section (2) unless the assessee or partner, as the case may be, has been heard, or has been given a reasonable opportunity of being heard

(4) No prosecution for an offence against this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this section

OLD.

(5) An Assistant Commissioner or a Commissioner, who has made an order under sub-section (1) or sub-section (2), shall forthwith send a copy of the same to the Income-tax Officer

NEW.

(5) An *Appellate Assistant Commissioner* or a Commissioner, who has made an order under sub-section (1) or sub-section (2), shall forthwith send a copy of the same to the Income-tax Officer

(6) *The Income-tax Officer shall not impose any penalty under this section without the previous approval of the Inspecting Assistant Commissioner*

OLD.	NEW.
29. *Notice of demand.* When the Income-tax Officer has determined a sum to be payable by an assessee under section 23, or when an order has been passed under sub-section (2) of section 25 or section 28 for the payment of a penalty, the Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum so payable	**29** *Notice of demand* *When any tax or penalty is due in consequence of any order passed under or in pursuance of this Act, the Income-tax Officer shall serve upon the assessee or other person liable to pay such tax or penalty a notice of demand in the prescribed form specifying the sum so payable*
30 *Appeal against assessment under this Act* (1) Any assessee objecting to the amount or rate at which he is assessed under section 23 or section 27, or denying his liability to be assessed under this Act, or objecting to a refusal of an Income-tax Officer to register a firm under section 26-A or to make a fresh assessment under section 27, or to any order against him under sub-section (2) of section 25 or section 25-A or section 28, made by an Income-tax Officer, may appeal to the Assistant Commissioner against the assessment or against such refusal or order	**30** *Appeal against assessment under this Act* (1) Any assessee objecting to the amount *of income assessed under section 23 or section 27, or the amount of loss computed under section 24 or the amount of tax determined under section 23 or section* 27, or denying his liability to be assessed under this Act, or objecting to a refusal of an Income-tax Officer to register a firm under section 26-A or to make a fresh assessment under section 27 or *objecting* to any order * * * under sub-section (2) of section 25 or section 25-A *or sub-section* (2) *of section* 26 or section 28, made by an Income-tax Officer, *or objecting to any penalty imposed by an Income-tax Officer under sub-section* (6) *of section* 44-*E or sub-section* (5) *of section* 44-*F or sub-section* (1) *of section* 46, *or objecting to a refusal of an Income-*

NOTES

Section 29 —This section has been entirely recast and a notice of demand is now made obligatory whenever any tax or penalty is due

Section 30 extends the scope of Appeals Provision is made for appeal in the following cases —Assessment under section 23 (4), assessment resulting in loss, refusal of refund or full refund under sections 48, 49, 49-B or 49 C (section 50-A then becomes superfluous and is deleted) Provision is also made to prevent an assessee questioning an assessment on a firm or an order under section 23-A in respect of a Company otherwise than in an appeal against the firm's or the Company's assessment —*Objects and Reasons*.

OLD.	NEW.
	tax Officer to allow a claim to a refund under section 48, 49 or 49-F, or to the amount of the refund allowed by the Income-tax Officer under any of those sections, and any assessee, being a company, objecting, to an order made by an Income-tax Officer under sub-section (1) of section 23-A, may appeal to the *Appellate Assistant Commissioner* against the assessment or against such refusal or order:
Provided that no appeal shall lie in respect of an assessment made under sub-section (4) of section 23, or under that sub-section read with section 27	*Provided that no appeal shall lie against an order under sub-section (1) of section 46 unless the tax has been paid*
	Provided further that where the partners of a firm are individually assessable on their shares in the total income of the firm, any such partner may appeal to the Appellate Assistant Commissioner against any order of an Income-tax Officer determining the amount of the total income or the loss of the firm or the apportionment thereof between the several partners, but in respect of matters which are determined by such order may not appeal against the assessment of his own total income
	Provided further that a shareholder in a company in respect of which an order under sec-

NOTES

'The first two changes indicated in sub-clause (*a*) of the clause and the change in sub clause (*b*) restore references to section 27 of the Act These have again become necessary since we have decided to retain that section' The change made in sub-clause (*a*) (*v*) [now (*iv*)] has the effect of restoring in sub section (1) of section 30 of the Act the original proviso omitted by the Bill, which enacted that no appeal shall lie in respect of an assessment made under sub-section (4) of section 23 or under that sub-section read with section 27 —*Select Committee Report*

The section in its final form practically affords an appeal against every final order of the Income-tax Officer

OLD	NEW.
	tion 23-A has been passed by an Income-tax Officer, may not in respect of matters determined by such order appeal against the assessment of his own total income
(2) The appeal shall ordinarily be presented within thirty days of receipt of the notice of demand relating to the assessment or penalty objected to or of the intimation of the refusal to pass an order under sub-section (1) of section 25-A, or to register a firm under section 26-A or of the date of the refusal to make a fresh assessment under section 27, as the case may be: but the Assistant Commissioner may admit an appeal after the expiration of the period if he is satisfied that the appellant had sufficient cause for not presenting it within that period	(2) The appeal shall ordinarily be presented within thirty days of receipt of the notice of demand relating to the assessment or penalty objected to or of the intimation of the refusal to pass an order under sub-section (1) of section 25-A, or to register a firm under section 26-A, or of the date of the refusal to make a fresh assessment under section 27, *or of the intimation of an order under sub-section* (1) *of section* 23-*A or under section* 48, 49 *or* 49-*F*, as the case may be; but the *Appellate Assistant Commissioner* may admit an appeal after the expiration of the period if he is satisfied that the appellant had sufficient cause for not presenting it within that period

(3) The appeal shall be in the prescribed form and shall be verified in the prescribed manner

OLD	NEW.
31 (1) The Assistant Commissioner shall fix a day and place for the hearing of the appeal, and may from time to time adjourn the hearing Hearing of appeal	31 (1) The *Appellate Assistant Commissioner* shall fix a day and place for the hearing of the appeal, and may from time to time adjourn the hearing Hearing of appeal

NOTES

Section 31 is amended so as to give power to the Appellate Assistant Commissioner to admit fresh grounds of appeal and to direct the Income tax Officer to amend the assessments of partners of firms or members of associations in accordance with the appellate orders in the firm's or association's assessment It also gives him power to enhance a penalty The Income-tax Officer is given the right to be represented at the hearing of an appeal Owing to the institution of separate Appellate Assistant Commissioners it is considered necessary for the Department to be so represented

Section 31 —The conflicting views of the Chief Court of Oudh (10 I T C 473, 1937 I T R 417) and of the Lahore High Court (1937 I T R 137) whether fresh grounds of appeal may be filed before the Assistant Commissioner of Income tax is set at rest by the introduction of sub section (2-A) vesting discretion in the Appellate Assistant Commissioner to admit and hear fresh grounds of appeal

OLD.	NEW.
(2) The Assistant Commissioner may, before disposing of any appeal, make such further inquiry as he thinks fit, or cause further inquiry to be made by the Income-tax Officer	(2) The *Appellate Assistant Commissioner* may, before disposing of any appeal, make such further enquiry as he thinks fit, or cause further enquiry to be made by the Income-tax Officer
	(2-*A*) *The Appellate Assistant Commissioner may, at the hearing of an appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal, if the Appellate Assistant Commissioner is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable*
(3) In disposing of an appeal the Assistant Commissioner may, in the case of an order of assessment,—	(3) In disposing of an appeal the *Appellate Assistant Commissioner*, may, in the case of an order of assessment,—
(*a*) confirm, reduce, enhance or annul the assessment, or	(*a*) confirm, reduce, enhance or annul the assessment, *and in the case of an assessment on a firm or association of persons, authorise the Income-tax Officer to amend accordingly any assessment made on any partner of the firm or any member of the association*, or
(*b*) set aside the assessment and direct the Income-tax Officer to make a fresh assessment after making such further inquiry as the Income-tax Officer thinks fit or the Assistant Commissioner may direct, and the Income-tax Officer shall thereupon proceed to make such fresh assessment,	(*b*) set aside the assessment and direct the Income-tax Officer to make a fresh assessment after making such further enquiry as the Income-tax Officer thinks fit or the *Appellate Assistant Commissioner* may direct, and the Income-tax Officer shall thereupon proceed to make such fresh assessment *and determine where necessary the amount of tax payable on the basis of such fresh assessment*,
or, in the case of an order refusing to register a firm under section 26-A or to make a fresh assessment under section 27,	or, in the case of an order refusing to register a firm under section 26-A or to make a fresh assessment under section 27,

OLD.	NEW
(*c*) confirm such order, or cancel it and direct the Income-tax Officer to register the firm or to make a fresh assessment, as the case may be,	(*c*) confirm such order, or cancel it and direct the Income-tax Officer to register the firm or to make a fresh assessment as the case may be,
or, in the case of an order under sub-section (2) of section 25 or section 28,	or, in the case of an order under sub-section (2) of *section* 25, *or sub-section* (1) *of section* 23-*A or sub-section* (2) *of section* 26 *or section* 48, 49 *or* 49-*F*
(*d*) confirm, cancel or vary such order	(*d*) confirm, cancel or vary such order,
	or, in the case of an order under sub-section (1) *of section* 25-*A*,
	(*e*) *confirm such order or cancel it and either direct the Income-tax Officer to make further enquiry and pass a fresh order or to make an assessment in the manner laid down in sub-section* (2) *of section* 25-*A*,
	or, in the case of an order under section 28 *or sub-section* (6) *of section* 44-*E or sub-section* (5) *of section* 44-*F or sub-section* (1) *of section* 46,
	(*f*) *confirm or cancel such order or vary it so as either to enhance or reduce the penalty*
	or in the case of an appeal against computation of loss under section 24,
	(*g*) *confirm or vary such computation* ·
Provided that the Assistant Commissioner shall not enhance an assessment unless the appellant has had a reasonable opportunity of showing cause against such enhancement	Provided that the *Appellate Assistant Commissioner* shall not enhance an assessment *or a penalty* unless the appellant has had a reasonable opportunity of showing cause against such enhancement
	Provided further that at the hearing of any appeal against an order of an Income-tax Officer,

OLD	NEW
(2) The Assistant Commissioner may, before disposing of any appeal, make such further inquiry as he thinks fit, or cause further inquiry to be made by the Income-tax Officer	(2) The *Appellate Assistant Commissioner* may, before disposing of any appeal, make such further enquiry as he thinks fit, or cause further enquiry to be made by the Income-tax Officer
	(2-*A*) *The Appellate Assistant Commissioner may, at the hearing of an appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal, if the Appellate Assistant Commissioner is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable*
(3) In disposing of an appeal the Assistant Commissioner may, in the case of an order of assessment,—	(3) In disposing of an appeal the *Appellate Assistant Commissioner*, may, in the case of an order of assessment,—
(*a*) confirm, reduce, enhance or annul the assessment, or	(*a*) confirm, reduce, enhance or annul the assessment, *and in the case of an assessment on a firm or association of persons, authorise the Income-tax Officer to amend accordingly any assessment made on any partner of the firm or any member of the association*, or
(*b*) set aside the assessment and direct the Income-tax Officer to make a fresh assessment after making such further inquiry as the Income-tax Officer thinks fit or the Assistant Commissioner may direct, and the Income-tax Officer shall thereupon proceed to make such fresh assessment,	(*b*) set aside the assessment and direct the Income-tax Officer to make a fresh assessment after making such further enquiry as the Income-tax Officer thinks fit or the *Appellate Assistant Commissioner* may direct, and the Income-tax Officer shall thereupon proceed to make such fresh assessment *and determine where necessary the amount of tax payable on the basis of such fresh assessment*,
or, in the case of an order refusing to register a firm under section 26-A or to make a fresh assessment under section 27,	or, in the case of an order refusin to register a firm under sectio 26-A or to make a fresh asses ment under section 27,

OLD.	NEW
(*c*) confirm such order, or cancel it and direct the Income-tax Officer to register the firm or to make a fresh assessment, as the case may be,	(*c*) confirm such order, or cancel it and direct the Income-tax Officer to register the firm or to make a fresh assessment as the case may be,
or, in the case of an order under sub-section (2) of section 25 or section 28,	or, in the case of an order under sub-section (2) of *section* 25, *or sub-section* (1) *of section* 23-*A or sub-section* (2) *of section* 26 *or section* 48, 49 *or* 49-*F*
(*d*) confirm, cancel or vary such order	(*d*) confirm, cancel or vary such order,
	or, in the case of an order under sub-section (1) *of section* 25-*A,*
	(*e*) *confirm such order or cancel it and either direct the Income-tax Officer to make further enquiry and pass a fresh order or to make an assessment in the manner laid down in sub-section* (2) *of section* 25-*A,*
	or, in the case of an order under section 28 *or sub-section* (6) *of section* 44-*E or sub-section* (5) *of section* 44-*F or sub-section* (1) *of section* 46,
	(*f*) *confirm or cancel such order or vary it so as either to enhance or reduce the penalty*
	or in the case of an appeal against computation of loss under section 24,
	(*g*) *confirm or vary such computation*
Provided that the Assistant Commissioner shall not enhance an assessment unless the appellant has had a reasonable opportunity of showing cause against such enhancement	Provided that the *Appellate Assistant Commissioner* shall not enhance an assessment *or a penalty* unless the appellant has had a reasonable opportunity of showing cause against such enhancement
	Provided further that at the hearing of any appeal against an order of an Income-tax Officer,

OLD.

32 (1) Any assessee objecting to an order passed by an Assistant Commissioner under section 28 or to an order enhancing his assessment under sub-section (3) of section 31, may appeal to the Commissioner within thirty days of the date on which he was served with notice of such order

Appeals against orders of Assistant Commissioner

NEW

the Income-tax Officer shall have the right to be heard either in person or by a representative

*32 (1) Any assessee objecting to an order passed by an *Appellate Assistant Commissioner* under section 28 or to an order *under sub-section* (3) *of section* 31 *enhancing his assessment or a penalty imposed under section* 28 *or sub-section* (6) *of section 44-E or sub-section* (5) *of section 44-F* may appeal to the Commissioner within thirty days of the date on which he was served with notice of such order

Appeals against orders of Assistant Commissioner.

(2) The appeal shall be in the prescribed form, and shall be verified in the prescribed manner

(3) In disposing of the appeal the Commissioner may, after giving the appellant an opportunity of being heard, pass such orders thereon as he thinks fit

OLD.

33 (1) The Commissioner may of his own motion call for the record of any proceeding

Power of revision

NEW

†33. (1) The Commissioner may of his own motion call for the record of any proceeding

Power of revision

NOTES

*When Part II of the Indian Income tax (Amendment) Act (Act VII of 1939) comes into force this section is to be omitted [*See* p 1]

Amendment Act Section 87 —Section 32 of the said Act shall be omitted

†When Part II of the Indian Income-tax (Amendment) Act (Act VII of 1939) comes into force the following section will be substituted [*See* p 1]

Amendment Act Section 88 —For section 33 of the said Act the following section shall be substituted, namely —

Appeals against orders of Appellate Assistant Commissioner

33 (1) *Any assessee objecting to an order passed by an Appellate Assistant Commissioner under section 28 or section 31 may appeal to the Appellate Tribunal within sixty days of the date on which he is served with notice of such order*

(2) *The Commissioner may, if he objects to any order passed by an Appellate Assistant Commissioner under section 31, direct the Income tax Officer to appeal to the Appellate Tribunal against such order, and such appeal may be made at any time before the expiry of sixty days from the date of the order*

(3) *An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner, and shall, except in the case of an appeal referred to in sub-section (2), be accompanied by a fee of one hundred rupees*

(4) *The Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and shall communicate any such orders to the assessee and to the Commissioner*

(5) *Save as provided in section 66 orders passed by the Appellate Tribunal on appeal shall be final*

OLD	NEW.
...der this Act which has been ...ken by any authority subordinate to him or by himself when exercising the powers of an Assist...t Commissioner under sub-...ction (4) of section 5	under this Act which has been taken by any authority subordinate to him or by himself when exercising the powers of an *Appellate Assistant Commissioner* under *sub-section* (5) of section 5

(2) On receipt of the record the Commissioner may make such ...quiry or cause such inquiry to be made and, subject to the pro-...sions of this Act, may pass such orders thereon as he thinks fit

Provided that he shall not pass any order prejudicial to an ...sessee without hearing him or giving him a reasonable opportunity ... being heard

OLD	NEW
33-A (1) Any person aggrieved by an order of an Income-tax Officer under sub-section (1) or sub-...ction (2) of section 23-A may, ...ithin thirty days of the date on ...hich he was served with notice ... such order, lodge an appeal in ...e office of the Commissioner (2) The appeal shall be in the ...rescribed form and shall be veri-...ed in the prescribed manner (3) The Commissioner shall ...fer such appeal, with a state-...ent of his own opinion thereon, ... a Board of Referees for deci-...on, and the Board of Referees ...all decide the appeal after hear-...g the appellant and any person ...eputed by the Commissioner Provided that, before making ... reference to a Board of Re-...erees, the Commissioner may, ...nd at the request of the appel-...nt shall, in exercise of his powers ...f revision under section 33, decide ...he matters in dispute and there-...pon the assessee may withdraw ...is appeal or proceed with it	**33-A** Omitted

Reference to ...oard of Re...rees

NOTES

Section 33-A which prescribes the reference to a Board of Referees of an order under section 23-A is omitted Owing to the amendment of section 23 A it is considered that this section is unnecessary and that the appeal can be heard by the Appellate Assistant Commissioner in the ordinary way

OLD

(4) The decision of the Board of Referees shall be forwarded to the Commissioner who shall transmit it to the Income-tax Officer who passed the original order, and shall also send copies to each Income-tax Officer who has made any assessment consequent upon such order; and where a decision reverses or modifies the order of the Income-tax Officer, fresh assessments shall be made in accordance therewith, or such consequential adjustments as may be required shall be made in any assessment already made

(5) The decision of a Board of Referees shall not be subject to appeal to any Income-tax authority, and shall not be revised by the Commissioner in exercise of his powers under section 33

(6) A Board of Referees shall consist of not less than three and not more than five persons, of whom not less than one-half shall be non-officials having business experience, and one shall be a judicial officer not inferior in rank to a Subordinate Judge or a Judge of a Small Cause Court who has held judicial office for a period of not less than ten years

(7) Subject to the provisions of sub-section (6), the Central Board of Revenue may make rules regulating the formation, composition and procedure of Boards of Referees

Income escaping assessment

34 If for any reason income, profits or gains chargeable to income-tax has escaped assessment

NEW

Income escaping assessment

34 (1) *If in consequence of definite information which has come into his possession, the Income-tax Officer*

NOTES

Section 34—makes important changes which deals with income escaping assessment The most important change is the extension of the period for making such assessments

OLD

in any year, or has been assessed at too low a rate, the Income-tax Officer may, at any time within one year of the end of that year, serve on the person liable to pay tax on such income, profits or gains, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22, and may proceed to assess or re-assess such income, profits or gains, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section

NEW

discovers that income, profits or gains chargeable to income-tax *have escaped assessment in any year, or have been under-assessed, or have been assessed at too low a rate, or have been the subject of excessive relief under this Act,* the Income-tax Officer may, *in any case in which he has reason to believe that the assessee has concealed the particulars of his income or deliberately furnished inaccurate particulars thereof, at any time within eight years, and in any other case at any time within four years,* of the end of that year serve on the person liable to tax on such income, profits or gains, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-sec-

NOTES

from one year to six years This follows the United Kingdom law and in conjunction with compulsory returns (Section 22) and penalties (Section 28) it is expected to be a very effective provision for dealing with illegal evasion Owing to a recent decision of the Calcutta High Court which narrowly restricts the scope of section 34 it is considered necessary to amend it so as to make it clear that it is applicable where the Income-tax Officer is of opinion that income has escaped assessment This amendment follows section 22 (2) which has given rise to no difficulty in practice The section is also amended so as to remove any doubts as to its applicability to cases of under-assessment

At present there is no time limit for the completion of assessment proceedings begun in time Sub section (2) provides that they shall be completed within the period of six years from the end of the assessment year —*Objects and Reasons*

Section 34 —The proposals contained in the Bill adopted the period of six years uniformly as the limit for the carrying forward of losses under section 24, for pursuing income which had escaped assessment under section 34, for the rectification of errors under section 35 and for the claiming of refunds under section 50 We have decided to retain six years as the limit for the carrying forward of losses under section 24, but we think that in all the other cases the limit should be a period of four years except that it should be extended to eight years, where income has escaped assessment in consequence of the assessee having concealed the particulars of his income or deliberately furnished inaccurate particulars of his income The changes made in this clause and in section 35 give effect to this decision

The change of the expression "is of opinion" to "discovers" in sub clause (*a*) of this clause brings the wording of sub section (1) of section 34 into accord with the wording of the corresponding English provision A minority of us desired further changes to be inserted in the sub-section —*Select Committee Report*

Section 34 *Sub section* (3) nullifies the effect of the Privy Council judgment in *Rajendranath Mukherjee* v *Commissioner of Income tax Bengal*, (61 I A 10, 61 Cal 285, 66 M L J 121, 7 I T C 143) that there is no time limit for completing an assessment once begun

OLD.	NEW.
	tion (2) of section 22 and ma proceed to assess or re-assess suc income, profits or gains, and th provisions of this Act shall, so fa as may be, apply accordingly a if the notice were a notice issued under that sub-section:

Provided that the tax shall be charged at the rate at which it would have been charged had the income, profits or gains no escaped assessment or full assessment, as the case may be

OLD.	NEW.
	Provided further that wher the income, profits or gains concerned are income, profits or gains liable to assessment for a year ending prior to the commencement of the Indian Income-tax (Amendment) Act, 1939, or where the assessment made or to be made is an assessment made or to be made on a person deemed to be the agent of a non-resident person under section 43, this sub-section shall have effect as if for the periods of eight years and four years a period of one year were substituted
	(2) *No order of assessment under section 23 or of assessment or re-assessment under sub-section (1) of this section shall be made after the expiry, in any case to which clause (c) of sub-section (1) of section 28 applies, of eight years, and in any other case, of four years from the end of the year in which the income, profits and gains were first assessable*
35 (1) The Commissioner or Assistant Commissioner may, at any time within one year from the date Rectification of mistake	*35 (1) The Commissioner or *Appellate Assistant Commissioner* may at any time *within four years* Rectification of mistake

NOTES

*When Part II of the Indian Income-tax (Amendment) Act (Act VII of 1939) comes into force the following amendment will have to be made to the section [*See* p 1] —

OLD	NEW.
of any order passed by him in appeal or, in the case of the Commissioner, in revision under section 33 and the Income-tax Officer may, at any time within one year from the date of any demand made upon an assessee, on his own motion rectify any mistake apparent from the record of the appeal, revision or assessment, as the case may be, and shall within the like period rectify any such mistake which has been brought to his notice by the assessee	from the date of any order passed by him in appeal or, in the case of the Commissioner, in revision under section 33 and the Income-tax Officer may, at any time *within four years* from the date of any *assessment order passed by him*, on his own motion rectify any mistake apparent from the record of the appeal, revision or assessment, as the case may be, and shall within the like period rectify any such mistake which has been *brought to his notice by an assessee*
Provided that no such rectification shall be made, having the effect of enhancing an assessment unless the Commissioner, the Assistant Commissioner or the Income-tax Officer, as the case may be, has given notice to the assessee of his intention so to do and has allowed him a reasonable opportunity of being heard	Provided that no such rectification shall be made, having the effect of enhancing an assessment unless the Commissioner, the *Appellate Assistant Commissioner* or the Income-tax Officer, as the case may be, has given notice to the assessee of his intention so to do and has allowed him a reasonable opportunity of being heard
	Provided further that no such rectification shall be made of any mistake in any order passed more than one year before the commencement of the Indian Income-tax (Amendment) Act, 1939

(2) Where any such rectification has the effect of reducing the assessment, the Income-tax Officer shall make any refund which may be due to such assessee

(3) Where any such rectification has the effect of enhancing the assessment, the Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 29, and the provisions of this Act shall apply accordingly

NOTES

Amendment Act Section 89 —In section 35 of the said Act, sub sections (2) and (3) shall be renumbered sub sections (3) and (4), respectively, and the following shall be inserted as sub section (2), namely —

(2) The provisions of sub-section (1) apply also in like manner to the rectification of mistakes by the Appellate Tribunal

Section 35 besides making minor amendments in section 35 (rectification of mistakes) extends the period for rectification from one year to four years

Tax to be calculated to nearest anna

36 In the determination of the amount of tax or of a refund payable under this Act, fractions of an anna less than six pies shall be disregarded, and fractions of an anna equal to or exceeding six pies shall be regarded as one anna

OLD

Power to take evidence on oath etc

37 The Income-tax Officer, Assistant Commissioner and Commissioner shall, for the purposes of this Chapter, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely —

(a) enforcing the attendance of any person and examining him on oath or affirmation;

(b) compelling the production of documents; and

(c) issuing commissions for the examination of witnesses,

and any proceeding before an Income-tax Officer, Assistant Commissioner or Commissioner under this Chapter shall be deemed to be a "judicial proceeding" within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code

NEW.

Power to take evidence on oath etc

*37 The income-tax Officer, *Appellate Assistant Commissioner* and Commissioner shall, for the purposes of this Chapter, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely —

(a) enforcing the attendance of any person and examining him on oath or affirmation;

(b) compelling the production of documents; and

(c) issuing commissions for the examination of witnesses, and any proceeding before an Income-tax Officer, *Appellate Assistant Commissioner* or Commissioner under this Chapter shall be deemed to be a "judicial proceeding" within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code

Power to call for information

38 The Income-tax Officer or Assistant Commissioner may, for the purposes of this Act,—

NOTES

*When Part II of the Indian Income-tax (Amendment) Act (Act VII of 1939) comes into force the following amendments to the section will have to be made (see p 1)

Amendment 1st Section 90 —In section 37 of the said Act, for the words "and Commissioner" the words "Commissioner and Appellate Tribunal" and for the words "or Commissioner" in clause (a) the words "Commissioner or Appellate Tribunal" shall be substituted

Section 38—makes important additions It gives the Income-tax Officer or Assistant Commissioner power to call for lists of persons to whom rent, interest commission or the like in any year amounting to more than two hundred rupees is paid It gives the Income-tax Officer and the Inspector power to visit premises and make enquiries This only gives

(1) require any firm, or Hindu undivided family to furnish him with a return of the members of the firm, or of the manager or adult male members of the family, as the case may be, and of their addresses,

(2) require any person whom he has reason to believe to be a trustee, guardian, or agent, to furnish him with a return of the names of the persons for or of whom he is trustee, guardian, or agent, and of their adresses,

OLD	NEW
(3) require any person whom he has reason to believe to be engaged in business, to furnish him with a return containing particulars of the location and style of his principal place of business, and of his branch businesses, if any, the names and addresses of his partners in any business, and the extent of his own share and the shares of all such partners in the profits of such business or businesses	(3) *require any assessee to furnish a statement of the names and addresses of all person to whom he has paid in any year rent, interest, commission, royalty or brokerage, or any annuity not being an annuity taxable under the head 'salaries', amounting to more than four hundred rupees, together with particulars of all such payments made*

Power to inspect the register of members of any company

39 The Income-tax Officer or Assistant Commissioner, or any person authorised in writing in this behalf by the Income-tax Officer or Assistant Commissioner, may inspect and, if necessary, take copies, or cause copies to be taken, of any register of the members, debenture-holders or mortgagees of any company or of any entry in such register

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NOTES

egal sanction to existing practice It also gives the Income tax Officer power when visiting such premises to call for accounts and stamp them The object of this provision is to cope with cases in which false accounts are submitted for assessment or in which at the time of assessment the existence of accounts is denied For failure to comply with the Income-tax Officer's request a penalty is provided in section 51 —*Objects and Reasons*

Section 38—In the new clause (3) of sub section (1) of section 38 proposed by the Bill we have substituted for the vague expression "or the like" the definite expression "royalty or brokerage, or any annuity not being an annuity taxable under the head 'salaries'" The annuities so described are mainly those paid by life insurance companies We have revised the proposed sub-section (2) of section 38 so as to reduce the powers which the Bill proposed to give to Income tax Officers and Inspectors The wide powers of entry are taken away, and entry is made possible only when the Commissioner has given a written authorization A minority of us are still dissatisfied with the sub section in the form which it now takes —*Select Committee Report*

The clause relating to the power given to Income tax Officers to visit premises and make enquiries has been deleted by the Assembly

CHAPTER V.

LIABILITY IN SPECIAL CASES

OLD.

Guardians, trustees and agents

40 In the case of any guardian, trustee or agent of any person being a minor, lunatic or idiot or residing out of British India (all of which persons are hereinafter in this section included in the term beneficiary) being in receipt on behalf of such beneficiary of any income, profits or gains chargeable under this Act, the tax shall be levied upon and recoverable from such guardian, trustee or agent, as the case may be, in like manner and to the same amount as it would be leviable upon and recoverable from any such beneficiary if of full age, sound mind, or resident in British India, and in direct receipt of such income, profits or gains, and all the provisions of this Act shall apply accordingly

NEW.

Guardians, trustees and agents

40. In the case of any guardian, trustee or agent of any person being a minor, lunatic or idiot or residing out of British India (all of which persons are hereinafter in this section included in the term beneficiary) *being entitled to receive on behalf of such beneficiary any income*, profits or gains chargeable under this Act, the tax shall be levied upon and recoverable from such guardian, trustee or agent, as the case may be, in like manner and to the same amount as it would be leviable upon and recoverable from any such beneficiary if of full age, sound mind, or resident in British India, and in direct receipt of such income, profits or gains, and all the provisions of this Act shall apply accordingly

Provided that in the case of a beneficiary being a person residing out of British India the tax may be levied upon and recovered from him direct

OLD.

Courts of Wards, etc

41 In the case of income, profits or gains chargeable under this Act which are received by the Courts of Wards, the Administrators-General, the Official Trustees or by any receiver

NEW.

Courts of Ward, etc

41 (1) In the case of income, profits or gains chargeable under this Act which * * the Courts of Wards, the Administrators-General, the Official Trustees or any receiver or manager (including

NOTES

Section 40 is amended so as to make it clear that an assessment can be made on a non-resident direct instead of on his resident agent Further, in order to cover all cases, it changes the basis of assessment on the guardian, trustee or agent from assessment on what he receives to assessment on what he is entitled to receive, on the beneficiary's behalf

Section 41 makes alterations corresponding to the alterations made in section 40 In addition it makes trustees assessable in respect of the trust

OLD	NEW
or manager (including any person whatever his designation who in fact manages property on behalf of another) appointed by or under any order of a Court, the tax shall be levied upon and recoverable from such Court of Wards, Administrator-General, Official Trustee, receiver or manager in the like manner and to the same amount as it would be leviable upon and recoverable from any person on whose behalf such income, profits or gains are received, and all the provisions of this Act shall apply accordingly	any person whatever his designation who in fact manages property on behalf of another) appointed by or under any order of a Court *or any trustee or trustees appointed under a duly executed trust deed (including the trustee or trustees under any wakf deed which is valid under the Mussalman Wakf Validating Act, 1913) are entitled to receive on behalf of any person,* the tax shall be levied upon and recoverable from such Court of Wards, Administrator-General, Official Trustee, receiver or manager *or trustee or trustees* in the like manner and to the same amount as it would be leviable upon and recoverable from *the person on whose behalf such income, profits or gains are receivable,* and all the provisions of this Act shall apply accordingly *Provided that where any such income, profits or gains or any part thereof are not specifically receivable on behalf of any one person, or where the individual shares of the persons on whose behalf they are receivable are indeterminate or unknown, the tax shall be levied and recoverable at the maximum rate* *Provided further that when part only of the income profits*

NOTES

income and provides for assessment at the maximum rate of income chargeable under the section which is not specifically the income of a beneficiary or where the individual shares in the income are indeterminate or unknown In other cases the income will be assessed at the rate applicable to the individual beneficiary Provision is also made for cases where part only of the trust income is chargeable

41 (1) "Including any trustee or trustees under any wakf deed which is valid under the Mussalman Wakf Validating Act, 1913," were added in the Assembly to make it clear such trusts were also included

The decision of the Privy Council in *The Trustees of Sir Currimbhoy Ebrahim Baronetcy Trust* v *Commissioner of Income-tax,* (61 I A 209, 58 Bom 317, 66 M L J

OLD.

42 (1) In the case of any person residing out of British India, all profits or gains accruing or arising, to such person, whether directly or indirectly, through or from any business connection or property in British India, shall be deemed to be income accruing or arising within British India,

Non-residents

NEW.

and gains of a trust is chargeable under this Act, that proportion only of the income, profits and gains receivable by a beneficiary from the trust which the part so chargeable bears to the whole income, profits and gains of the trust shall be deemed to have been derived from that part.

(2) Nothing contained in sub-section (1) shall prevent either the direct assessment of the person on whose behalf income, profits or gains therein referred to are receivable, or the recovery from such person of the tax payable in respect of such income, profits or gains

42 (1) *All income, profits or gains accruing or arising*, whether directly or indirectly, through or from any business connection *in British India, or through or from any property in British India, or through or from any asset or source of income in British India, or through or from any money*

Non-residents

NOTES

643, 7 I T C 195, 1934 I T R 148) and of the Bombay High Court in *Rao Bahadur Manaji Rajuji* v *Commissioner of Income-tax*, (7 I T C 463) are modified and trustees or receivers are assessable on the entire income of the estate under their control only when the shares of the beneficiaries are indeterminate or unknown

Section 42 deals with the income of non-residents accruing or arising without British India but deemed to accrue or arise within British India At present sub section (1) applies to income accruing or arising through or from any business connection or property in British India In order to bring within the net of taxation all income arising in a primary sense from British Indian sources, the sub-section has been amended so as to include income accruing or arising "from any asset or source of income in British India or through or from any money lent at interest and brought into British India in cash or in kind"

Sub section (1) has been also amended so as to make it clear that either the non-resident or his agent may be assessed and so as to allow the agent to retain enough of his principal's moneys to pay the tax

Sub section (2) has been amended so as to put a British subject or subject of an Indian State in no worse position than a non-British subject or person who is not a subject of an Indian State

OLD	NEW.
and shall be chargeable to income-tax in the name of the agent of any such person, and such agent shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax.	*lent at interest and brought into British India in cash or in kind,* shall be deemed to be income accruing or arising within British India, and *where the person entitled to the income, profits or gains is not resident in British India, shall be chargeable to income-tax either in his name or in the name of his agent, and in the latter case* such agent shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax
Provided that any arrears of tax may be recovered also in accordance with the provisions of this Act from any assets of the non-resident person which are, or may at any time come within British India	*Provided that where the person entitled to the income, profits or gains is not resident in British India, the income-tax so chargeable may be recovered by deduction under any of the provisions of section* 18 *and that* any arrears of tax may be recovered also in accordance with the provisions of

NOTES

Sub-section (3), a new provision, narrows the scope of the whole section by confining it to that part of the profits attributable to operations in British India—*Objects and Reasons*

No change has been made in this clause, but in connection with section 42 and section 43 of the Act we considered certain difficulties which arose in the application of the agency principle to "hedging and straddling" operations when these operations take place through a person carrying on a *bona fide* business as broker in British India and a foreign broker acting for an undisclosed foreign principal We feel that some provision should be inserted in the Act to ensure that the British Indian broker shall not in such a case be deemed to be an agent of the foreign principal The limited time at our disposal has prevented us from making specific provision to this end in the Bill, but we understand that Government will bring forward proposals on the subject at the consideration stage—*Select Committee Report*

42 (1) The last proviso was added by the Assembly The proviso will only come into operation when there is disagreement between the agent and the non-resident principal and the Income-tax Officer cannot make a greater demand than that specified by the Officer in the certificate *See also* notes under section 43

The decision of the Privy Council in *Currimbhoy Ebrahim and Sons, Ltd* v *Commissioner of Income-tax, Bombay,* (63 I A 1, 60 Bom 172, 9 I T C 121, 1935 I T C 395, 70 M L J 247) that for the existence of a business connection the non resident must also carry on a business is got over by enacting that income arising from any money lent at interest and brought into British India is assessable under section 42 (1)

By the insertion of the provision that a non-resident can be assessed either in his name or in the name of his agent the proposition laid down in I L R 1938 All. 432 (A.I.R 1938 All. 310, 1938 I T R 217) that a non-resident cannot be assessed directly, has no longer any force

OLD.

(2) Where a person not resident in British India, and not being a British subject or a firm or company constituted within His Majesty's dominions or a branch thereof, carries on business with a person resident in British India, and it appears to the Income-tax Officer or the Assistant Commissioner, as the case may be, that

NEW.

this Act from any assets of the non-resident person which are, or may at any time come, within British India.

Provided further that any such agent, or any person, who apprehends that he may be assessed as such an agent, may retain out of any money payable by him to such non-resident person a sum equal to his estimated liability under this sub-section, and in the event of any disagreement between the non-resident person and such agent or person as to the amount to be so retained, such agent or person may secure from the Income-tax Officer a certificate stating the amount to be so retained pending final settlement of the liability, and the certificate so obtained shall be his warrant for retaining that amount

Provided further that the amount recoverable from such agent or person at the time of final settlement shall not exceed the amount specified in such certificate except to the extent to which such agent or person may at such time have in his hands additional assets of such non-resident person

(2) Where a person not resident *or not ordinarily resident* in British India, carries on business with a person resident in British India, and it appears to the Income tax Officer that owing to the close connection *between such persons, the course of business is so arranged that the business done by the resident person with the*

OLD	NEW.
owing to the close connection between the resident and the non-resident person and to the substantial control exercised by the non-resident over the resident, the course of business between those persons is so arranged, that the business done by the resident in pursuance of his connection with the non-resident produces to the resident either no profits or less than the ordinary profits which might be expected to arise in that business, the profits derived therefrom or which may reasonably be deemed to have been derived therefrom, shall be chargeable to income-tax in the name of the resident person who shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax	*person not resident or not ordinarily resident* produces to the resident either no profits or less than the ordinary profits which might be expected to arise in that business, the profits derived therefrom or which may reasonably be deemed to have been derived therefrom, shall be chargeable to income-tax in the name of the resident person who shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax
(3) Where any profits or gains have accrued or arisen to any person directly or indirectly from the sale in British India by him or by any agency or branch on his behalf of any merchandise exported to British India by him or any agency or branch on his behalf from any place outside British India, the profits or gains shall be deemed to have accrued and arisen and to have been received in British India, and no allowance shall be made under sub-section (2) of section 10 in respect of any buying or other commission whatsoever not actually paid, or of any other amounts not actually spent, for the purpose of earning such profits or gains	(3) *In the case of a business of which all operations are not carried out in British India, the profits and gains of the business deemed under this section to accrue or arise in British India shall be only such profits and gains as are reasonably attributable to that part of the operations carried out in British India*

Agent to include persons treated as such

43. Any person employed by or on behalf of a person residing out of British India, or having any business connection with such person, or through whom such person is in the receipt of any income, profits or gains upon whom the Income-tax Officer has caused a notice to be served of his intention of treating him as the agent of the non-resident person shall, for all the purposes of this Act, be deemed to be such agent.

OLD.	NEW
	Provided that where transactions are carried on in the ordinary course of business through a broker in British India in such circumstances that the broker does not in respect of such transactions deal directly with or on behalf of a non-resident principal but deals with or through a non-resident broker who is carrying on such transactions in the ordinary course of his business and not as a principal such first mentioned broker shall not be deemed to be an agent under this section in respect of such transactions
Provided that no person shall be deemed to be the agent of a non-resident person, unless he has had an opportunity of being heard by the Income-tax Officer as to his liability	Provided *further* that no person shall be deemed to be the agent of a non-resident person, unless he has had an opportunity of being heard by the Income-tax Officer as to his liability
Liability in case of a discontinued firm or partnership 44 Where any business, profession or vocation carried on by a firm has been discontinued, every person who was at the time of such discontinuance a member of such firm shall be jointly and	Liability in case of a discontinued firm or *association* 44 *Where any business, profession or vocation carried on by a firm or association of persons has been discontinued, or where an Association of persons is dissolved, every person who was at*

NOTES

Section 43.—The first proviso was added by the Assembly to make it clear that such transactions as are mentioned carried on by a broker in the ordinary course of business should not make the resident broker an agent within the meaning of the section

Section 44.—Amends so as to include cases of business, profession or vocation discontinued by an association of persons as well as a firm and makes members of such an

OLD	NEW.
severally liable for the amount of tax payable in respect of the income, profits and gains of the firm	*the time of such discontinuance or dissolution a partner of such firm or a member of such association shall, in respect of the income, profits and gains of the firm or association, be jointly and severally liable to assessment under Chapter IV and for the amount of tax payable and all the provisions of Chapter IV shall, so far as may be, apply to any such assessment*

CHAPTER V-A

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF SHIPPING

Liability to tax of occasional shipping

44A The provisions of this Chapter shall, notwithstanding anything contained in the other provisions of this Act, apply for the purpose of the levy and recovery of tax in the case of any person who resides out of British India and carries on business in British India in any year as the owner or charterer of a ship (such person hereinafter in this Chapter being referred to as the principal), unless the Income-tax Officer is satisfied that there is an agent of such principal from whom the tax will be recoverable in the following year under the other provisions of this Act

Return of profits and gains

44B (1) Before the departure from any port in British India of any ship in respect of which the provisions of this Chapter apply, the master of the ship shall prepare and furnish to the Income-tax Officer a return of the full amount paid or payable to the principal, or to any person on his behalf, on account of the carriage of all passengers, livestock or goods shipped at that port since the last arrival of the ship thereat

(2) On receipt of the return, the Income-tax Officer shall assess the amount referred to in sub-section (1), and for this purpose may call for such accounts or documents as he may require, and one-twentieth of the amount so assessed shall be deemed to be the amount of the profits and gains accruing to the principal on account of the carriage of the passengers, livestock and goods shipped at the port

(3) When the profits and gains have been assessed as aforesaid the Income-tax Officer shall determine the sum payable as tax thereon at the rate for the time being applicable to the total income

NOTES

association liable to assessment on the firm's or association's profits as well as for the tax payable and is intended to ensure that all privileges accorded by Chapter IV shall be available to an assessee assessed under this section

of a company, and such sum shall be payable by the master of the ship, and a port-clearance shall not be granted to the ship until the Customs-collector, or other officer duly authorised to grant the same, is satisfied that the tax has been duly paid

OLD

44-C Adjustment. Nothing in this Chapter shall be deemed to prevent a principal from claiming, in any year following that in which any payment has been made on his behalf under this Chapter, that an assessment be made on his total income in the previous year, and that the tax payable on the basis thereof be determined in accordance with the other provisions of this Act, and, if he so claims, any such payment as aforesaid shall be treated as a payment in advance of the tax and the difference between the sum so paid, and the amount of tax found payable by him shall be paid by him or refunded to him, as the case may be

NEW.

44-C Adjustment. Nothing in this Chapter shall be deemed to prevent a principal from claiming, *in the year* following that in which any payment has been made on his behalf under this Chapter, that an assessment be made of his total income in the previous year, and that the tax payable on the basis thereof be determined in accordance with the other provisions of this Act, and, if he so claims, any such payment as aforesaid shall be treated as a payment in advance of the tax and the difference between the sum so paid, and the amount of tax found payable by him shall be paid by him or refunded to him, as the case may be

CHAPTER V-B

Special Provisions relating to Avoidance of Liability to Income-tax and Super-tax

Avoidance of income-tax by transactions resulting in the transfer of income to persons resident or ordinarily resident abroad

44-D (1) *Where any person has, by means of a transfer of assets, by virtue or in consequence whereof, either alone or in conjunction with associated operations, any income which if it were the income of such person would be chargeable to income-tax becomes payable to a person not*

NOTES

Sections 44-D to 44-F introduce a new Chapter dealing with a particular type of evasion

One of the methods of avoiding the payment of tax without breaking the law is to transfer the assets from which the income arises to a Company which is resident outside

OLD.	NEW.
	resident or to a person resident but not ordinarily resident in British India, acquired any rights by virtue or in consequence of which he has within the meaning of this section power to enjoy such income, whether forthwith or in the future, that income shall whether it would or would not have been chargeable to income-tax apart from the provisions of this section, be deemed to be income of such first mentioned person for all the purposes of this Act
	(2) *Where any person receives or is entitled to receive, whether before or after any transfer of assets by virtue or in consequence whereof either alone or in conjunction with associated operations any income becomes payable to a person not resident or resident but not ordinarily resident in British India, any sum paid or payable by way of a loan or repayment of a loan or any other sum, being a sum which is not paid or payable for full consideration in money or money's worth, paid or payable otherwise than as income, such income shall, whether it would or would not have been chargeable to income-tax apart from the provisions of*

NOTES

British India, and then to receive payments from that Company in a form and in such circumstances that the amounts received from the Company are never in fact repayable or repaid to it The effect of these arrangements is that the real owner of the assets receives the income therefrom indirectly and in a capital form These receipts cannot, as the law stands at present, be treated as income in the hands of the recipient, nor, since the Company is a non-resident Company, can it be subjected to the provisions of section 23 A which deals with a Company which, to enable its proprietor to avoid super tax fails to distribute its income

It is the object of the present clause to prevent the loss of tax through such devices It will be seen that the first effect of a device of this kind is that the income which in

OLD.	NEW.
	this section, be deemed to be the income of the first-mentioned person for all the purposes of this Act.
	(3) *Sub-sections* (1) *and* (2) *shall not apply if such first-mentioned person shows to the satisfaction of the Income-tax Officer either—*
	(*a*) *that neither the transfer nor any associated operation had for its purpose or for one of its purposes the avoidance of liability to taxation, or*
	(*b*) *that the transfer and all associated operations were* bona fide *commercial transactions and were not designed for the purpose of avoiding liability to taxation*
	(4) *For the purposes of this section, an 'associated operation' means, in relation to any transfer, an operation of any kind effected by any person in relation to any of the assets transferred or any assets representing whether directly or indirectly any of the assets transferred, or to the income arising from any such assets, or to any assets representing whether directly or indirectly*

NOTES

reality is the income of a person liable to pay income-tax or super-tax or both becomes the income of a non resident person (which term, of course, includes a Company) which is either not liable or liable for only a smaller amount of tax By means of the loans the real proprietor continues to have power to enjoy the income from the assets

It is difficult, if not impossible, to draft a *simple* preventive clause which a skilled lawyer cannot evade The clause has, therefore, been drafted in wide terms and follows the wording of section 18 of the United Kingdom Finance Act, 1936 Its terms are very comprehensive, and the net effect intended is that wherever income which really belongs to a person liable to income tax and super-tax becomes by means of an artificial set of transactions the income of somebody liable to pay less tax or no tax at all, such income can for tax purposes be treated as the income of the person to whom it really belongs —*Objects and Reasons*

Section 44 *D*—"We have revised proposed section 44-D and we have added two new *sections to that which the clause proposed to insert in the Act*"

OLD	NEW.
	the accumulations of income arising from any such assets
	(5) A person shall, for the purposes of this section, be deemed to have power to enjoy income of a person not resident or resident but not ordinarily resident, in British India, if—
	(a) the income is in fact so dealt with by any person as to be calculated at some point of time and, whether in the form of income or not, to enure for the benefit of the first mentioned person, or
	(b) the receipt or accrual of the income operates to increase the value to such first mentioned person of any assets held by him or for his benefit, or
	(c) such first mentioned person receives or is entitled to receive at any time any benefit provided or to be provided out of that income or out of moneys which are or will be available for the purpose by reason of the effect or successive effects of the associated operations on that income and on any assets which represent that income, or
	(d) such first mentioned person has power by means of the exercise of any power of appointment or power of revocation or otherwise to obtain for himself whether with or without the con-

NOTES

The changes made in section 44-D remove certain defects in the provisions relating to evasion of tax by transfer of assets Transfers to persons resident in but not domiciled in British India are now covered, and by sub section (2) evasion by transfers resulting in payment of income disguised in the form of loans, or payments made without adequate consideration, is provided for By sub section (3) it is provided that a transfer must be untainted by any purpose of avoidance in order to escape the mischief of the section, and the addition of a new clause in sub section (7) clarifies the position of companies incorporated outside but resident in British India

Section 44-D contains provisions similar to the English Finance Act, 1938

OLD.	NEW.
	sent of any other person, the beneficial enjoyment of the income, or (e) *such first mentioned person is able, in any manner whatsoever and whether directly or indirectly, to control the application of the income* (6) *In determining whether a person has power to enjoy income within the meaning of this section, regard shall be had to the substantial result and effect of the transfer and any associated operations, and all benefits which may at any time accrue to such person as a result of the transfer and any associated operations shall be taken into account irrespective of the nature or form of the benefits.* (7) *For the purposes of this section—* (a) *the expression 'assets' includes property or rights of any kind, and the expression 'transfer' in relation to rights includes the creation of those rights,* (b) *the expression 'benefit' includes a payment of any kind,* (c) *references to income of a person not resident or of a person not ordinarily resident in British India shall, where the amount of the income of a company for*

NOTES

The new sections 44 E and 44-F are designed to prevent avoidance of tax by what are known as "bond-washing" transactions, involving the manipulation of securities so that the securities will pass temporarily into the legal ownership of some second person who is either not liable at all or liable in a lesser degree to tax, under such conditions that the interest on the securities is the income of this second person A common form of the process is the sale of securities *cum* interest with a simultaneous contract to repurchase them *ex*-interest Where foreign securities are concerned this second person may be a foreigner resident abroad entitled to claim exemption from the tax on the interest More often a financial concern in India is utilized whose computation of profits includes the results of realizing securities, so that the concern can profitably offer "bond-washing" facilities to the owner of securities bearing fixed interest, where the owner himself is not liable to taxation on the realization of the securities —*Select Committee Report*

OLD	NEW.
	44-E (1) *Where the owner of any securities (in this sub-section and in sub-section (2) referred to as 'the owner') agrees to sell or transfer those securities, and by the same or any collateral agreement—*

Avoidance of tax by certain transactions in securities

(a) agrees to buy back or re-acquire the securities, or

(b) acquires an option, which he subsequently exercises to buy back or re-acquire the securities, then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable otherwise than by the owner, the interest payable as aforesaid shall, whether it would or would not have been chargeable to tax apart from the provisions of this section, be deemed for all the purposes of this Act to be the income of the owner and not to be the income of any other person

(2) The references in sub-section (1) to buying back or re-acquiring the securities shall be deemed to include references to buying or acquiring similar securities, so, however, that where similar securities are bought or acquired, the owner shall be under no greater liability to tax than he would have been under if the original securities had been bought back or re-acquired

(3) Where any person carrying on a business which consists

NOTES

Section 44 E—*See* notes under section 44-D

NEW

wholly or partly in dealing in securities agrees to buy or acquire any securities, and by the same or any collateral agreement—

(a) agrees to sell back or re-transfer the securities, or

(b) acquires an option, which he subsequently exercises to sell back or re-transfer the securities, then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable by him, no account shall be taken of the transaction in computing for any of the purposes of this Act the profits arising from or loss sustained in the business

(4) Sub-section (3) shall have effect, subject to any necessary modifications, as if references to selling back or re-transferring the securities included references to selling or transferring similar securities

(5) For the purpose of this section—

(a) the expression 'interest' includes a dividend;

(b) the expression 'securities' includes stocks and shares,

(c) securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred.

NEW.

(6) *The Income-tax Officer may by notice in writing require any person to furnish him within such time as he may direct (not being less than twenty-eight days), in respect of all securities of which such person was the owner at any time during the period specified in the notice, such particulars as he considers necessary for the purposes of this section and for the purpose of discovering whether tax has been borne in respect of the interest on all those securities, and, if that person without reasonable excuse fails to comply with the notice, he shall be liable to a penalty not exceeding five hundred rupees and to a further penalty of the like amount for every day after the infliction of such penalty during which the failure continues*

Avoidance of tax by sales cum dividend

44-F (1) *Any person upon whom notice is served by the Income-tax Officer requiring him to furnish a statement of particulars relating to any securities in which, at any time during the period specified in the notice he has had any beneficial interest, and in respect of which, within such period, either no income was received by him, or the income received by him was less than the sum to which the income would have amounted if the income from such securities had accrued from day to day and been apportioned accordingly, shall, whether an assessment to income-tax or super-tax in respect of his total income has or has not been*

NEW

made for the relevant year or years of assessment, furnish such a statement and such particulars in the form and within the time (not being less than twenty-eight days) required by the notice

(2) If it appears to the Income-tax Officer by reference to all the circumstances in relation to the securities of any such person (including circumstances with respect to sales, purchases, dealings, contracts, arrangements, transfers, or any other transactions relating to such securities) that such person has thereby avoided or would avoid more than ten per cent of the amount of the income-tax or super-tax for any year which would have been payable in his case in respect of the income from those securities if the income had been deemed to accrue from day to day and had been apportioned accordingly, and the income so deemed to have been apportioned to him had been treated as part of his total income from all sources for the purposes of income-tax or super-tax, then those securities shall be deemed to be securities to which sub-section (3) applies.

(3) For the purposes of assessment to income-tax or super-tax in the case of any such person, the income from any securities to which this sub-section applies shall be deemed to accrue from day to day, and in the case of the sale or transfer of any such securities by or to him shall be deemed to have been received as and when it is deemed to accrued.

OLD. | NEW.

Provided that this section shall not apply if such person proves to the satisfaction of the Income-tax Officer that the avoidance of income-tax or super-tax was exceptional and not systematic and that there was not in his case in any of the three preceding years any such avoidance of income-tax or super-tax, or that the provisions of section 44-E have been applied in his case in respect of such income

(4) *If any person fails to furnish any statement or particulars required under this section, or if the Income-tax Officer is not satisfied with any statement or particulars furnished under the section, the Income-tax Officer may make an estimate of the amount of the income which, under the foregoing provisions of this section, is to be deemed to form part of the person's total income for the purposes of income-tax or super-tax*

(5) *If any person without reasonable excuse fails to furnish any statement or particulars required under this section, he shall be liable to a penalty not exceeding five hundred rupees, and to a further penalty of the like amount for every day after the infliction of such penalty during which the failure continues*

(6) *For the purpose of this section the expression 'securities' includes stocks and shares*

CHAPTER VI

RECOVERY OF TAX AND PENALTIES

OLD.

Tax when payable

45 Any amount specified as payable in a notice of demand under sub-section (4) of

NEW.

Tax when payable

45 Any amount specified as payable in a notice of demand *under sub-section* (3) of

OLD	NEW
section 23-A or under section 29 or an order under section 31 or section 32 or section 33, shall be paid within the time, at the place and to the person mentioned in the notice or order, or if a time is not so mentioned, then on or before the first day of the second month following the date of the service of the notice, or order, and any assessee failing so to pay shall be deemed to be in default, provided that, when an assessee has presented an appeal under section 30 or under section 33-A, the Income-tax Officer may in his discretion treat the assessee as not being in default as long as such appeal is undisposed of	section 23-A or under section 29 or an order under section 31 or section 32 or section 33, shall be paid within the time, at the place and to the person mentioned in the notice or order, or if a time is not so mentioned, then on or before the first day of the second month following the date of the service of the notice or order, and any assessee failing so to pay shall be deemed to be in default, provided that, when an assessee has presented an appeal under section 30, * * * the Income-tax Officer may in his discretion treat the assessee as not being in default as long as such appeal is undisposed of
	Provided further that where an assessee has been assessed in respect of income arising outside British India in a country the laws of which prohibit or restrict the remittance of money to British India, the Income-tax Officer shall not treat the assessee as in default in respect of that part of the tax which is due in respect of that amount of his income which by reason of such prohibition or restriction cannot be brought into British India, and shall continue to treat the assessee as not in default in respect of such part of the tax until the prohibition or restriction is removed
	Explanation—*For the purposes of this section income shall*

NOTES

Section 45—The proviso was added by the Assembly to mitigate the hardship which might otherwise be caused to an assessee by his being called upon to pay tax on income which he is prohibited by the laws of the country of origin to remit to British India

The object of the explanation is to deem to be remittances what are called constructive remittances, *e g*, instead of bringing it the assessee spends it away in the country of origin on a holiday or in some other expenditure or use

NEW

be deemed to have been brought into British India if it had been utilised or could have been utilised for the purposes of any expenditure actually incurred by the assessee without British India or if the income whether capitalised or not has been brought into British India in any form

46 (1) When an assessee is in default in making a payment of income-tax, the Income-tax Officer may in his discretion direct that, in addition to the amount of the arrears, a sum not exceeding that amount shall be recovered from the assessee by way of penalty

Mode and time of recovery

(1-*A*) For the purposes of sub-section (1), the Income-tax Officer may direct the recovery of any sum less than the amount of the arrears and may enhance the sum so directed to be recovered from time to time in the case of a continuing default, so however that the total sum so directed to be recovered shall not exceed the amount of the arrears payable

(2) The Income-tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee, and the Collector, on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land revenue

Provided that without prejudice to any other powers of the Collector in this behalf, he shall for the purpose of recovering the said amount have in respect of the attachment and sale of debts due to the assessee the powers which under the Code of Civil Procedure, 1908, a Civil Court has in respect of the attachment and sale of debts due to a judgment-debtor for the purpose of the recovery of an amount due under a decree

(3) In any area with respect to which the Commissioner has directed that any arrears may be recovered by any process enforceable for the recovery of an arrear of any municipal tax or local rate imposed under any enactment for the time being in force in any part of the province, the Income-tax Officer may proceed to recover the amount due by such process

(4) The Commissioner may direct by what authority any powers or duties incident under any such enactment as aforesaid to the enforcement of any process for the recovery of a municipal tax or local rate shall be exercised or performed when that process is employed under sub-section (3)

(5) If any assessee is in receipt of any income chargeable under the head "Salaries" the Income-tax Officer may require any person paying the same to deduct from any payment subsequent to the date of such requisition any arrears due from such assessee, and such person shall comply with any such requisition, and shall pay the sum so deducted to the credit of the Central Government, or as the Central Board of Revenue directs

(6) If the recovery of income-tax in any area has been entrusted to a Provincial Government under section 124 (1) of the Government of India Act, 1935, the Provincial Government may direct with respect to that area or any part thereof, that income-tax shall be recovered therein with, and as an addition to, any municipal tax or local rate, by the same person and in the same manner as the municipal tax or local rate is recovered

OLD	NEW.
(7) Save in accordance with the provisions of sub-section (1) of section 42, no proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the last day of the year in which any demand is made under this Act	(7) Save in accordance with the provisions of sub-section (1) of section 42 *or of the proviso to section* 45, no proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the last day of *the financial year* in which any demand is made under this Act
47 Any sum imposed by way of penalty under the provisions of sub-section (2) of section 25, section 28 or sub-section (1) of section 46, shall be recoverable in the manner provided in this Chapter for the recovery of arrear of tax *Recovery of penalties*	47 Any sum imposed by way of penalty under the provisions of sub-section (2) of section 25, section 28, *sub-section* (6) *of section 44-E, sub-section* (5) *of section 44-F* or sub-section (1) of section 46, shall be recoverable in the manner provided in this Chapter for the recovery of arrear of tax *Recovery of penalties*

CHAPTTR VII

REFUNDS

48 (1) If a shareholder in a company who has received any dividend therefrom satisfies the In- *Refunds*	*48 (1) *If any individual Hindu undivided family, company, local authority, firm or other asso-* *Refunds*

NOTES

Section 46 (7) is amended to accord with the scheme of the Act which prescribes the financial year as the assessment year

*When Part II of the Indian Income-tax (Amendment) Act (Act VII of 1939) comes into force, the following amendments are to be made to the section (see p 1).

OLD

come-tax Officer or other authority appointed by the Central Government in this behalf that the rate of income-tax applicable to the profits or gains of the company at the time of the declaration of such dividend is greater than the rate applicable to his total income of the year in which such dividend was declared, or that his total income in such year is below the minimum chargeable with income-tax, he shall, on production of the certificate received by him under the provisions of section 20, be entitled to a refund on the amount of such dividend (including the amount of the tax thereon) calculated at the difference between those rates or at the rate applicable to the profits and gains of the company at the time of the declaration of such dividend, as the case may be

(2) If a member of a registered firm or any person who being a minor has been admitted to the benefits of partnership in such firm, satisfies the Income-tax Officer or other authority appointed

NEW.

cration of persons, or any partner of a firm or member of an association individually satisfies the Income-tax Officer or other authority appointed by the Central Government in this behalf that the amount of tax paid by him or on his behalf or treated as paid on his behalf for any year exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of any such excess

(2) *The Appellate Assistant Commissioner in the exercise of his appellate powers, or the Commissioner in the exercise of his appellate powers or powers of revision if satisfied to the like effect shall cause a refund to be made by the Income-tax Officer of any amount found to have been wrongly paid or paid in excess.*

(3) *Where income of one person is included under any provision of this Act in the total income of any other person such other person only shall be entitled to a refund under this section in respect of such income*

NOTES

Amendment Act Section 91—*In sub-section* (2) *of section* 48 *of the said Act, for the words "The Appellate Assistant Commissioner in the exercise of his appellate powers or the Commissioner in the exercise of his powers of revision" the words "The Appellate Assistant Commissioner or the Appellate Tribunal in the exercise of their powers" shall be substituted*

Section 48—Sweeping changes are made in section 48 which deals with refunds of tax on dividends, of tax paid by registered firms and of tax deducted at source The section in its reference to rates is unnecessarily cumbrous, it would no longer apply to registered firms whose partners are to be assessed directly (section 23 (5)) and it leaves the position regarding double income tax relief in doubt Instead of the main provisions of the section a simple provision has been inserted giving an assessable person (section 3) a refund of any excess tax paid by him or on his behalf or treated as so paid over the amount with which he was properly chargeable The amended section does not require any distinction to be made between British and non-British subjects as their rates of tax are dealt with elsewhere [*see* section 17 (2)]

The new sub-section (2) inserted in section 48 as amended by this clause inserts the provisions of section 48-A (2) which were incorrectly omitted when the present simplified section 48 was substituted for the whole of sections 48 and 48-A It preserves the power of the Assistant Commissioner and of the Commissioner to order refunds to be made The charge made in sub section (3) of section 48 is a drafting improvement

OLD

by the Central Government in this behalf that the rate of income-tax applicable to his total income of the previous year was less than the rate at which income-tax has been levied on the profits or gains of the firm of that year, or that his total income of the previous year was below the minimum chargeable with income-tax, he shall be entitled to a refund on his share of those profits or gains calculated at the difference between those rates or at the rate at which income-tax has been levied, as the case may be

(3) If the owner of a security from the interest on which, or any person from whose salary, income-tax has been deducted in accordance with the provisions of section 18, satisfies the Income-tax Officer or other authority appointed by the Central Government in this behalf that the rate of income-tax applicable to his total income of the previous year was less than the rate at which income-tax has been charged in making such deduction in that year, or that his total income of the previous year was below the minimum chargeable with income-tax, he shall be entitled to a refund on the amount of interest or salary from which such deduction has been made calculated at the difference between those rates or at the rate at which income-tax has been deducted, as the case may be

(3-*A*) Where the shareholder referred to in sub-section (1), or the member of a registered firm or the minor admitted to the benefits of partnership referred to

NEW

(4) *Nothing in this section shall operate to validate any objection or appeal which is otherwise invalid or to authorize the revision of any assessment or other matter which has become final and conclusive, or the review by any officer of a decision of his own which is subject to appeal or revision, or, where any relief is specifically provided elsewhere in this Act, to entitle any person to any relief other or greater than that relief or to entitle any person to claim a refund of tax payable before the commencement of the Indian Income-tax (Amendment) Act*, 1939, *which he would not be entitled to claim but for the passing of that Act*

OLD	NEW.
in sub-section (2) or the owner of a security referred to in sub-section (3) is a person whose income is included under the provisions of sub-section (3) of section 16 in the total income of another person, the provisions of sub-sections (1), (2) and (3) shall apply as if that person were himself the person entitled to a refund under those sub-sections	
(4) For the purposes of this section, "total income" includes, in the case of any person not resident in British India, all income, profits and gains wherever arising, accruing or received, which, if arising, accruing or received in British India, would be included in the computation of total income under section 16	
(5) Nothing in this section shall entitle to any refund any person not resident in British India who is neither a British subject as defined in section 27 of the British Nationality and Status of Aliens Act, 1914, nor a subject of a State in India	
48-A (1) If in any case not provided for by section 48 or by the provisions relating to refunds elsewhere contained in this Act the Income-tax Officer is satisfied, upon claim made in this behalf, that tax has been paid by or on behalf of any person with which he was not properly chargeable or which was in excess of the amount with which he was properly chargeable, the Income-tax Officer shall allow a refund to such person of	**48-A** *Omitted*

General power to make refunds

NOTES

Section 48 A is omitted as the amendment of section 48 makes it superfluous

OLD

the amount so paid or so paid in excess

(2) The Assistant Commissioner in the exercise of his appellate powers, or the Commissioner in the exercise of his appellate powers or powers of revision if satisfied to the like effect shall in like manner cause a refund to be made by the Income-tax Officer of any amount found to have been wrongly paid or paid in excess

(3) Nothing in this section shall operate to validate any objection or appeal which is otherwise invalid or to authorise the revision of any assessment or other matter which has become final and conclusive, or the review by any officer of a decision of his own which is subject to appeal or revision, or where any relief is specifically provided elsewhere in this Act, to entitle any person to any relief other or greater than that relief

Relief in respect of United Kingdom income-tax

49 (1) If any person who has paid Indian income-tax for any year on any part of his income proves to the satisfaction of the Income-tax Officer

NEW

Relief in respect of United Kingdom income-tax

49 (1) If any person who has paid *by deduction under section* 18 *or otherwise* Indian income-tax for any year on any part of his income proves

NOTES

Section 49 —We have removed the two new sub sections which were inserted in section 49 of the Act by this clause, and have reproduced their contents in new sections 49 B and 49 C dealt with in clause 54 of the Bill

A minority of us desired to omit section 49 from the Act, and request that the Governor General's sanction to the moving of an amendment to this end, if held to be necessary, may be obtained —*Select Committee Report*

Section 49 deals with double income tax relief The amendments accomplish the following objects —Relief is restricted to half the Indian rate, the relief granted to the Company is taken into account in computing the refund admissible to the shareholder under section 48 and any excess relief granted to the Company over the relief admissible to the shareholder can be recovered from him

These amendments are designed to prevent any assessee getting more relief than he is entitled to The other amendments in the section are only technical improvements on the existing provisions

OLD	NEW
that he has paid United Kingdom income-tax for that year in respect of the same part of his income and that the rate at which he was entitled to, and has obtained, relief under the provisions of section 27 of the Finance Act, 1920, is less than the Indian rate of tax charged in respect of that part of his income, he shall be entitled to a refund of a sum calculated on that part of his income at a rate equal to the difference between the Indian rate of tax or the appropriate rate of United Kingdom income-tax, whichever is less, and the rate at which he was entitled to, and obtained relief under that section	to the satisfaction of the Income-tax Officer that he has paid *by deduction or otherwise* United Kingdom income-tax *for the corresponding year* in respect of the same part of his income and that the rate at which he was entitled to, and has obtained, relief under the provisions of section 27 of the Finance Act, 1920, is less than the Indian rate of tax charged in respect of that part of his income, he shall be entitled to a refund of a sum calculated on that part of his income at a rate equal to the difference between the Indian rate of tax or the appropriate rate of United Kingdom income-tax, whichever is less, and the rate at which he was entitled to, and obtained relief under that section *Provided that in no case shall the rate at which such refund is calculated exceed half the Indian rate of tax appropriate to the income of the person entitled to relief,*

(2) In sub-section (1)—

(*a*) the expression "Indian income-tax" means income-tax and super-tax charged in accordance with the provisions of this Act;

OLD	NEW
(*b*) the expression "Indian rate of tax" means the amount of the Indian income-tax divided by the income on which it was charged,	(*b*) *the expression "Indian rate of tax" means the amount of Indian income-tax exclusive of super-tax after deduction of any relief due to a claimant under the other provisions of this Act but before deduction of any relief due to him under this section, divided by his total income after deducting therefrom any income (including income from a share in an unregistered firm) exempted from tax by or under the pro-*

NEW.

visions of this Act, added to the amount of Indian super-tax before deduction of any relief due to the claimant under this section divided by his total income,

(*c*) the expression "United Kingdom income-tax" means income-tax and super-tax chargeable in accordance with the provisions of the Income-tax Acts

(*d*) the expression "appropriate rate of United Kingdom income-tax" has the meaning assigned to that expression in section 27 of the Finance Act, 1920, as amended by the Finance Act, 1927

49-A (1) *The Central Government may, by notification in the Official Gazette, make provision for the granting of relief in respect of income on which has been paid both income-tax (including super-tax) under this Act and Dominion income-tax*

Relief in respect of Indian State and Dominion income-tax.

(2) *For the purposes of this section "Dominion income-tax" means any income-tax or super-tax charged under any law in force in any Indian State or in any part of His Majesty's Dominions (other than the United Kingdom) where the laws of that State or part provide for relief in respect of tax charged on income both in that State or part and in British India which appears to the Central Board of Revenue to correspond to the relief which may be granted by this section*

NOTES.

The new section 49-A provides for the possibility of the grant of relief for double income-tax payments in certain cases to which section 49 does not apply Sections 49-B, 49 C reproduce in a more appropriate place and form the provisions contained in sub-sections (2) and (3) of section 49 of the Act as it was recast by the Bill

NEW

49-B Payment of income tax by company to be deemed payment by shareholder

Where a shareholder has received a dividend from a company which has paid income-tax imposed in British India or elsewhere, he shall be deemed, in respect of such dividend, himself to have paid the income-tax (exclusive of super-tax) paid by the company on so much of the dividend as bears to the whole the same proportion as the amount of income on which the company has paid such income-tax bears to the whole income of the company

49-C Relief granted to a company to be deemed relief granted to shareholder

(1) *Where a shareholder has received a dividend from a company which has obtained the relief referred to in section* 49 *or granted under section* 49-*A or under the India and Burma (Income-tax Relief) Order,* 1936, *he shall be deemed in respect of such dividend himself to have obtained such relief at the rate at which such relief has been granted, in respect of income-tax only, to the company for the financial year preceding the year in which the dividend was paid*

(2) *If the rate at which a shareholder is deemed under sub-section* (1) *to have obtained relief exceeds the rate at which he would have been entitled to relief had such relief been given direct to him by or under the said sections or Order, any excess shall be recovered from him either as an addition to the tax payable by*

OLD	NEW
	him on any assessment made on him under section 23 or section 34 or by setting it off against any relief due to him under section 48
	49-D Relief in respect of tax charged in country not providing for relief in respect of British Indian income tax. *If any person who has paid by deduction or otherwise Indian income-tax for any year in respect of any income arising without British India in a country the laws of which do not provide for any relief in respect of income-tax charged in British India proves that he has paid income-tax by deduction or otherwise under the laws of the said country in respect of the same income, he shall be entitled to the deduction from the Indian income-tax payable of a sum equal to one-half of such Indian income-tax or to one-half of such tax payable in the said country, whichever is the less*
49-A Power to set off amount of refunds against tax remaining payable. Where under any of the provisions of this Act, refund is found to be due to any person, the Income-tax Officer, Assistant Commissioner or Commissioner, as the case may be, may, in lieu of payment of the refund, set off the amount to be refunded, or any part of that amount against the tax, if any, remaining payable by the person to whom the refund is due	**49-E** Power to set off amount of refunds against tax remaining payable. Where under any of the provisions of this Act, a refund is found to be due to any person, the Income-tax Officer, *Appellate Assistant Commissioner* or Commissioner, as the case may be, may, in lieu of payment of the refund, set off the amount to be refunded, or any part of that amount against the tax, if any, remaining payable by the person to whom the refund is due

NOTES

Section 49-D —This section was inserted by the Assembly and affords relief in cases where Double Income-tax relief is not given in respect of British Indian Income-tax—the relief to the assessee is one half of the Indian or foreign income-tax paid whichever is less

OLD

49-B Where through death, incapacity, bankruptcy, liquidation or other cause, a person who would but for such cause have been entitled to a refund under any of the provisions of this Act, or to make a claim under section 48 or 48-A or 49, is unable to receive such refund or to make such claim, his executor, administrator or other legal representative, or the trustee or receiver, as the case may be, shall be entitled to receive such refund or to make such claim for the benefit of such person or his estate

Power of representation of deceased person or person disabled to make claim on his behalf

50 No claim to any refund of income-tax under this Chapter shall be allowed, unless it is made within one year from the last day of the year in which the tax was recovered or before the last day of the financial year commencing after the expiry of the previous year, as defined in clause (11) of section 2, in which the income arose on which the tax was recovered, whichever period may expire later

Limitation of claims for refund.

NEW

49-F Where through death, incapacity, bankruptcy, liquidation or other cause, a person who would but for such cause have been entitled to a refund under any of the provisions of this Act, or to make a claim under section 48 * * * or 49, is unable to receive such refund or to make such claim, his executor, administrator or other legal representative, or the trustee or receiver, as the case may be, shall be entitled to receive such refund or to make such claim for the benefit of such person or his estate

Power of representation of deceased person or person disabled to make claim on his behalf

50 No claim to any refund of income-tax *or super-tax* under this Chapter shall be allowed, unless it is made in *four years from the last day of the financial year commencing next after the expiry of the previous year in which the income arose, accrued or was received or was deemed to have arisen, accrued or been received or was brought into British India*

Limitation of claims for refund

Provided that where the claim is to a refund of income-tax or super-tax paid prior to the commencement of the Indian Income-tax (Amendment) Act, 1939, *the claim shall not be allowed unless it is made within one year from the last day of the year in which*

NOTES

Section 50 prescribes a period of limitation for claims to refunds The period is extended from one year to four years in accordance with a similar extension in other sections (Sections 34 and 35)

OLD	NEW
	the tax was recovered or before the last day of the financial year commencing after the expiry of the previous year as defined in clause (11) *of section* 2 *in which the income arose on which the tax was recovered, whichever period may expire later*
Provided that a claim to refund under section 49 may be admitted after the period of limitation herein prescribed, when the applicant satisfies the Commissioner, or an Assistant Commissioner of Income-tax specially empowered in this behalf by the Central Board of Revenue, that he had sufficient cause for not making the claim within such period.	Provided *further* that a claim to refund under section 49 *of tax paid prior to the commencement of the Indian Income-tax (Amendment) Act,* 1939, may be admitted after the period of limitation herein prescribed, when the applicant satisfies the Commissioner, or an Assistant Commissioner of Income-tax specially empowered in this behalf by the Central Board of Revenue, that he had sufficient cause for not making the claim within such period
50A (1) Any person objecting to a refusal of an Income-tax Officer to allow a claim to a refund under section 48 or 48A or 49 or to the amount of the refund made in any such case, may appeal to the Assistant Commissioner Appeal against refusal of refund (2) The appeal shall be presented within thirty days of the date on which the refusal of the refund or the amount of the refund allowed was communicated to the appellant (3) The appeal shall be made in the prescribed form and shall be verified in the prescribed manner. (4) The Assistant Commissioner may, after giving the appellant an opportunity of being	**50A** *Omitted*

Section 50-A —The omission of section 50-A follows the amendment of section 30

OLD.	NEW
heard, pass such orders as he thinks fit	

CHAPTER VIII.

OFFENCES AND PENALTIES

Failure to make payments or deliver returns or statements or allow inspection

51 If a person fails without reasonable cause or excuse—

(*a*) to deduct and pay any tax as required by section 18 or under sub-section (5) of section 46,

(*b*) to furnish a certificate required by sub-section (9) of section 18 or by section 20 to be furnished,

(*c*) to furnish in due time any of the returns mentioned in section 19-A, section 20-A, section 21, section 22, or section 38,	(*c*) to furnish in due time any of the returns mentioned in section 19-A, section 20-A, section 21, *sub-section* (2) *of* section 22, or section 38;

(*d*) to produce, or cause to be produced, on or before the date mentioned in any notice under sub-section (4) of section 22, such accounts and documents as are referred to in the notice,

(*e*) to grant inspection or allow copies to be taken in accordance with the provisions of section 39,

he shall, on conviction before a Magistrate, be punishable with fine which may extend to ten rupees for every day during which the default continues

False statement in declaration. 52 If a person makes a statement in a verification mentioned in section 19-A or section 20-A or section 22 or sub-section (2) of section 26-A or sub-section (3) of section 30, or sub-section (2) of section 32, or sub-section (2) of section 33-A, or sub-section (3) of section 50-A, which is false, and which he either knows or believes to be false, or does not believe to be true, he	False statement in declaration 52 If a person makes a statement in a verification mentioned in section 19-A or section 20-A *or section* 21 or section 22 or sub-section (2) of section 26-A or sub-section (3) of section 30, or sub-section (2) of section 32 * * * which is false, and which he either knows or believes to be false, or does not believe to be true, he shall *be punishable, on*

NOTES

Section 51—The alteration has the effect of removing the penalty otherwise imposable on failure to comply with the general notice issued under sub-section (1) of section 22 of the Act

Section 52—We have omitted the second sub clause of this clause, thereby removing from section 52 of the Act the words "without prejudice to any other penalty to which he may be liable under the Indian Penal Code", which the Bill proposed to insert

OLD	NEW
shall be deemed to have committed the offence described in section 177 of the Indian Penal Code	*conviction before a Magistrate, with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both*
53 (1) A person shall not be proceeded against for an offence under section 51 or section 52 except at the instance of the Assistant Commissioner *Prosecution to be at instance of Assistant Commissioner*	53 (1) A person shall not be proceeded against for an offence under section 51 or section 52 except at the instance of the *Inspecting Assistant Commissioner* *Prosecution to be at instance of Assistant Commissioner*
(2) The Assistant Commissioner may stay any such proceeding or compound any such offence	(2) *The Inspecting Assistant Commissioner may either before or after the institution of proceedings compound any such offence*

54 (1) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of this Act, or in any evidence given, or affidavit or deposition made, in the course of any proceedings under this Act other than proceedings under this Chapter, or in any record of any assessment proceeding, or any proceeding relating to the recovery of a demand, prepared for the purposes of this Act, shall be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall, save as provided in this Act, be entitled to require any public servant to produce before it any such return, accounts, documents or record or any part of any such record, or to give evidence before it in respect thereof.

Disclosure of information by a public servant

Section 53 —The change made has the effect of removing from section 53 (2) of the Act the reference to stay of proceedings, and at the same time, while leaving to the Assistant Commissioner the power to compound offences, requires the leave of the Court to any composition made after an offence has come before the Court

The Assembly has deleted from the Bill the provision requiring leave of court to compound after the offence has come before the court

Section 54 forbids disclosure of information contained in income tax proceedings Certain self-explanatory clauses are added to the existing clauses which permit such disclosure

The alterations made in the clause have the effect of converting the three provisos to sub section (2) of section 54 of the Act into separate sub sections, a form which we consider more appropriate in view of their contents We have also added further matters to the list of those exempted from the ban on disclosure These matters are contained in the new clause (*d*), dealing with suits in Civil Courts, clause (*f*), dealing with the audit officers, clause (*k*) and clause (*l*) which makes specific provision allowing the details necessary for establishing that a person is qualified to be an elector to be disclosed to a Returning Officer —*Select Committee Report*

(2) If a public servant discloses any particulars contained in any such statement, return, accounts, documents, evidence, affidavit, deposition or record, he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine

OLD	NEW
Provided that nothing in the section shall apply to the disclosure—	(3) * * Nothing in the section shall apply to the disclosure—

(*a*) of any such particulars for the purposes of a prosecution under the Indian Penal Code in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, or for the purposes of a prosecution under this Act, or

(*b*) of any such particulars to any person acting in the execution of this Act where it is necessary to disclose the same to him for the purposes of this Act, or

(*c*) of any such particulars occasioned by the lawful employment under this Act of any process for the service of any notice or the recovery of any demand, or

OLD	NEW
	(*d*) *of any such particulars to a Civil Court in any suit to which Government is a party, which relates to any matter arising out of any proceeding under this Act, or*
	(*e*) *of any such particulars to the Auditor-General of India for the purpose of enabling him to discharge his functions under section* 144 *of the Government of India Act,* 1935, *or*
	(*f*) *of any such particulars to any officer appointed by the Auditor-General of India or the Central Board of Revenue to audit income-tax receipts or refunds, or*
	(*g*) *of any such particulars, relevant to any inquiry into the conduct of an official of the Income-tax Department, to any*

OLD	NEW
	persons appointed Commissioners under the Public Servants (Inquiries) Act, 1850, *or to an officer otherwise appointed to hold such inquiry, or to a Public Service Commission established under the Government of India Act*, 1935, *when exercising its functions in relation to any matter arising out of any such inquiry, or*;
(*cc*) of any such particulars occasioned by the lawful exercise by a public servant of his powers under the Indian Stamp Act, 1899, to impound an insufficiently stamped document, or	(*h*) of any such particulars occasioned by the lawful exercise by a public servant of his powers under the Indian Stamp Act, 1899, to impound an insufficiently stamped document, or
(*d*) of such facts, to an authorised officer of the United Kingdom, as may be necessary to enable relief to be given under section 27 of the Finance Act, 1920, or a refund to be given under section 49 of this Act	(*i*) *of such facts, to an authorized officer of the United Kingdom, or of any Indian State or any part of His Majesty's Dominions which has entered into an agreement with British India for the granting of double taxation relief, as may be necessary for the purpose of enabling such relief or a refund under section* 49 *of this Act to be given, or*
	(*j*) *of such facts, to an officer of a Provincial Government, as may be necessary for the purpose of enabling that Government to levy or realise any tax imposed by it on agricultural income, or*
	(*k*) *of such facts to any authority exercising powers under the Sea Customs Act*, 1878, *or any Act of the Central Legislature imposing a duty of excise as may be necessary for enabling it duly to exercise such powers, or*

OLD

Provided further that nothing in this section shall apply to the production by a public servant before a Court of any document, declaration of affidavit filed, or the record of any statement or deposition made in a proceeding under section 26-A, or to the giving of evidence by a public servant in respect thereof

Provided further that no prosecution shall be instituted under this section except with the previous sanction of the Commissioner

NEW

(l) of such facts, to a Returning Officer, as may be necessary to establish whether a person is or is not entitled to be entered on an electoral roll, or

(m) so much of such particulars, to the appropriate authority, as may be necessary to establish, whether a person has or has not been assessed to income-tax in any particular year or years, where under the provisions of any law for the time being in force such fact is required to be established,

(4) Nothing in this section shall apply to the production by a public servant before a Court of any document, declaration or affidavit filed, or the record of any statement or deposition made in a proceeding under *section 25-A or* section 26-A, or to the giving of evidence by a public servant in respect thereof

(5) No prosecution shall be instituted under this section except with the previous sanction of the Commissioner

CHAPTER IX

SUPER-TAX

OLD

Charge of super-tax

55 In addition to the income-tax charged for any year, there shall be charged, levied and paid for that year in respect of the total income of the previous

NEW

Charge of super-tax.

55 In addition to the income-tax charged for any year, there shall be charged, levied and paid for that year in respect of the total income of the previous

NOTES

Section 55 amends the super-tax charging section, by exempting a member of an association of persons from super-tax where the income of the association has been assessed to super tax It also takes out of the exemption given to partners of unregistered firms the case (Section 23 (5) (*b*)) of an unregistered firm assessed as a registered firm

OLD	NEW.
year of any individual, Hindu undivided family, company, unregistered firm or other association of individuals, not being a registered firm, an additional duty of income-tax (in this Act referred to as super-tax) at the rate or rates laid down for that year by Act of the Central Legislature,	year of any individual, Hindu undivided family, *company, local authority, unregistered firm or other association of persons*, not being a registered firm, *or the partners of the firm or members of the association individually*, an additional duty of income-tax (in this Act referred to as super-tax) at the rate or rates laid down for that year by Act of the Central Legislature
	Provided that where under the provisions of clause (b) of sub-section (5) of section 23 an unregistered firm has been assessed in the manner applicable to a registered firm, super-tax shall be payable by each partner of the firm individually on his share in the income, profits and gains of the firm and not by the firm itself
Provided that, where the profits and gains of an unregistered firm have been assessed to super-tax, super-tax shall not be payable by an individual having a share in the firm in respect of the amount of such profits and gains which is proportionate to his share	Provided *further* that, where the profits and gains of an unregistered firm *or other association of persons not being a company* have been assessed to super-tax, super-tax shall not be payable by *a partner of the firm or a member of the association, as the case may be,* in respect of the amount of such profits and gains which is proportionate to his share
56 Subject to the provisions of this Chapter, the total income of any individual, Hindu undivided family, company, unregistered firm or other association of individuals shall, for the purposes of super-tax, be the total income as assessed for the purposes of income-tax, and where an assessment of total income has become	56 Subject to the provisions of this Chapter, the total income of any individual, Hindu undivided family, company, *local authority*, unregistered firm or other *association of persons* shall, for the purposes of super-tax, be the total income as assessed for the purposes of income-tax, and where an assessment of total in-
Total income for purposes of super tax	Total income for purposes of super tax

OLD	NEW
	(l) of such facts, to a Returning Officer, as may be necessary to establish whether a person is or is not entitled to be entered on an electoral roll, or
	(m) so much of such particulars, to the appropriate authority, as may be necessary to establish, whether a person has or has not been assessed to income-tax in any particular year or years, where under the provisions of any law for the time being in force such fact is required to be established,
Provided further that nothing in this section shall apply to the production by a public servant before a Court of any document, declaration of affidavit filed, or the record of any statement or deposition made in a proceeding under section 26-A, or to the giving of evidence by a public servant in respect thereof	(4) Nothing in this section shall apply to the production by a public servant before a Court of any document, declaration or affidavit filed, or the record of any statement or deposition made in a proceeding under *section 25-A or* section 26-A, or to the giving of evidence by a public servant in respect thereof
Provided further that no prosecution shall be instituted under this section except with the previous sanction of the Commissioner.	(5) No prosecution shall be instituted under this section except with the previous sanction of the Commissioner

CHAPTER IX

SUPER-TAX

55 In addition to the income-tax charged for any year, there shall be charged, levied and paid for that year in respect of the total income of the previous Charge of super-tax	55 In addition to the income-tax charged for any year, there shall be charged, levied and paid for that year in respect of the total income of the previous Charge of super-tax.

NOTES

Section 55 amends the super tax charging section, by exempting a member of an association of persons from super tax where the income of the association has been assessed to super-tax It also takes out of the exemption given to partners of unregistered firms the case (Section 23 (5) (*b*)) of an unregistered firm assessed as a registered firm

OLD	NEW.
year of any individual, Hindu undivided family, company, unregistered firm or other association of individuals, not being a registered firm, an additional duty of income-tax (in this Act referred to as super-tax) at the rate or rates laid down for that year by Act of the Central Legislature,	year of any individual, Hindu undivided family, *company, local authority, unregistered firm or other association of persons,* not being a registered firm, *or the partners of the firm or members of the association individually,* an additional duty of income-tax (in this Act referred to as super-tax) at the rate or rates laid down for that year by Act of the Central Legislature
	Provided that where under the provisions of clause (b) of sub-section (5) of section 23 an unregistered firm has been assessed in the manner applicable to a registered firm, super-tax shall be payable by each partner of the firm individually on his share in the income, profits and gains of the firm and not by the firm itself
Provided that, where the profits and gains of an unregistered firm have been assessed to super-tax, super-tax shall not be payable by an individual having a share in the firm in respect of the amount of such profits and gains which is proportionate to his share	Provided *further* that, where the profits and gains of an unregistered firm *or other association of persons not being a company* have been assessed to super-tax, super-tax shall not be payable by *a partner of the firm or a member of the association, as the case may be,* in respect of the amount of such profits and gains which is proportionate to his share
56 Total income for purposes of super tax. Subject to the provisions of this Chapter, the total income of any individual, Hindu undivided family, company, unregistered firm or other association of individuals shall, for the purposes of super-tax, be the total income as assessed for the purposes of income-tax, and where an assessment of total income has become	**56** Total income for purposes of super tax. Subject to the provisions of this Chapter, the total income of any individual, Hindu undivided family, company, *local authority,* unregistered firm or other *association of persons* shall, for the purposes of super-tax, be the total income as assessed for the purposes of income-tax, and where an assessment of tot

OLD

final and conclusive for the purposes of income-tax for any year, the assessment shall also be final and conclusive for the purposes of super-tax for the same year

57 (1) In the case of any person residing out of British India who is a member of a registered firm, and whose share of the profits from such firm is liable to super-tax, the remaining members of such firm who are resident in British India shall be jointly and severally liable to pay the super-tax due from the non-resident member in respect of such share

Non resident partners and shareholders

(2) Where any person pays any tax under the provisions of this section on account of another person who is residing out of British India, credit shall be given therefor in determining the amount of the tax to be payable by any agent of such non-resident person under the provisions of sections 42 and 43

58 (1) All the provisions of this Act, relating to the charge, assessment, collection and recovery of income-tax except those contained in section 3, the proviso to sub-section (1) of section 7, the second and third provisos to section 8, sub-section (2) of section 14, and sections 15, 17, 19, 20, 21, 48, 58-F and sub-sections (2) and (3) of

Application of Act to super tax

NEW.

come has become final and conclusive for the purposes of income-tax for any year, the assessment shall also be final and conclusive for the purposes of super-tax for the same year

57 *Omitted*

58 (1) All the provisions of this Act, relating to the charge, assessment, collection and recovery of income-tax except those contained in section 3, *the second proviso* to sub-section (1) of section 7, the second and third provisos to section 8, sub-section (2) of section 14, and sections 15, * * * 19, *and* 20, *and the first proviso to sub-*

Application of Act to super-tax

NOTES

Section 57 makes the resident partners of a firm responsible for the super-tax on a non resident's share of profits The amended section 23 (5) (*a*) makes this section superfluous and it is therefore omitted

Section 58 makes consequential amendments which deal with the application of the provisions of the Act to super-tax

OLD	NEW
section 58-G shall apply, so far as may be, to the charge, assessment, collection and recovery of super-tax	*section* (1) *of section* 41 *and section* * * 58-*F* and *sub-section* (2) of section 58-*G* shall apply, so far as may be, to the charge, assessment, collection and recovery of super-tax
(2) Save as provided in sub-section (3-*A*), (3-*B*), (3-*C*) and (3-*D*) of section 18, section 57 and section 58-*H* super-tax shall be payable by the assessee direct	(2) Save as provided in *sub-sections* (2), (2-*A*), (2-*B*), (3-*B*), (3-*C*), (3-*D*) *and* (3-*E*) of section 18, * * * and section 58-*H* super-tax shall be payable by the assessee direct

CHAPTER IX-A

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF PROVIDENT FUNDS

Definitions

58-A In this Chapter, unless there is anything repugnant in the subject or context,—

(*a*) a "recognised provident fund" means a provident fund which has been and continues to be recognised by the Commissioner, in accordance with the provisions of this Chapter;

(*b*) an "employer" means—

OLD	NEW
(*i*) a Hindu undivided family, company, firm or other association of individuals or persons, or	(*i*) a Hindu undivided family, company, firm or other association of * * * persons, or
(*ii*) an individual engaged in a business, profession or vocation whereof the profits and gains are assessable to income-tax under section 10 or section 11,	(*ii*) an individual engaged in a business, profession or vocation whereof the profits and gains are assessable to income-tax under section 10 * * *,
maintaining a provident fund for the benefit of his or its employees;	maintaining a provident fund for the benefit of his or its employees;

(*c*) an "employee" means an employee participating in a provident fund, but does not include a personal or domestic servant;

(*d*) a "contribution" means any sum credited by or on behalf of any employee out of his salary, or by an employer out of his own monies, to the individual account of an employee, but does not include any sum credited as interest;

(*e*) the "balance to the credit" of an employee means the total amount to the credit of his individual account in a provident fund at any time;

OLD	NEW
final and conclusive for the purposes of income-tax for any year, the assessment shall also be final and conclusive for the purposes of super-tax for the same year	come has become final and conclusive for the purposes of income-tax for any year, the assessment shall also be final and conclusive for the purposes of super-tax for the same year
57 (1) In the case of any person residing out of British India who is a member of a registered firm, and whose share of the profits from such firm is liable to super-tax, the remaining members of such firm who are resident in British India shall be jointly and severally liable to pay the super-tax due from the non-resident member in respect of such share *Non-resident partners and shareholders* (2) Where any person pays any tax under the provisions of this section on account of another person who is residing out of British India, credit shall be given therefor in determining the amount of the tax to be payable by any agent of such non-resident person under the provisions of sections 42 and 43	57 *Omitted*
58 (1) All the provisions of this Act, relating to the charge, assessment, collection and recovery of income-tax except those contained in section 3, the proviso to sub-section (1) of section 7, the second and third provisos to section 8, sub-section (2) of section 14, and sections 15, 17, 19, 20, 21, 48, 58-F and sub-sections (2) and (3) of *Application of Act to super-tax*	58 (1) All the provisions of this Act, relating to the charge, assessment, collection and recovery of income-tax except those contained in section 3, *the second proviso* to sub-section (1) of section 7, the second and third provisos to section 8, sub-section (2) of section 14, and sections 15, * * * 19, *and* 20, *and the first proviso to sub-* *Application of Act to super-tax*

NOTES

Section 57 makes the resident partners of a firm responsible for the super-tax on a non resident's share of profits The amended section 23 (5) (*a*) makes this section superfluous and it is therefore omitted

Section 58 makes consequential amendments which deal with the application of the provisions of the Act to super-tax.

OLD	NEW
section 58-G shall apply, so far as may be, to the charge, assessment, collection and recovery of super-tax	*section* (1) *of section* 41 *and section* * * 58-*F* and *sub-section* (2) of section 58-*G* shall apply, so far as may be, to the charge, assessment, collection and recovery of super-tax
(2) Save as provided in sub-section (3-*A*), (3-*B*), (3-*C*) and (3-*D*) of section 18, section 57 and section 58-*H* super-tax shall be payable by the assessee direct	(2) Save as provided in *sub-sections* (2), (2-*A*), (2-*B*), (3-*B*), (3-*C*), (3-*D*) *and* (3-*E*) of section 18, * * * and section 58-*H* super-tax shall be payable by the assessee direct

CHAPTER IX-A

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF PROVIDENT FUNDS

Definitions

58-A In this Chapter, unless there is anything repugnant in the subject or context,—

(*a*) a "recognised provident fund" means a provident fund which has been and continues to be recognised by the Commissioner, in accordance with the provisions of this Chapter;

(*b*) an "employer" means—

OLD	NEW
(*i*) a Hindu undivided family, company, firm or other association of individuals or persons, or	(*i*) a Hindu undivided family, company, firm or other association of * * * persons, or
(*ii*) an individual engaged in a business, profession or vocation whereof the profits and gains are assessable to income-tax under section 10 or section 11,	(*ii*) an individual engaged in a business, profession or vocation whereof the profits and gains are assessable to income-tax under section 10 * * *,
maintaining a provident fund for the benefit of his or its employees:	maintaining a provident fund for the benefit of his or its employees;

(*c*) an "employee" means an employee participating in a provident fund, but does not include a personal or domestic servant;

(*d*) a "contribution" means any sum credited by or on behalf of any employee out of his salary, or by an employer out of his own monies to the individual account of an employee, but does not include any sum credited as interest;

(*e*) the "balance to the credit" of an employee means the total amount to the credit of his individual account in a provident fund at any time;

(*f*) the "annual accretion" to the balance to the credit of an employee means the increase to such balance in any year, arising from contributions and interest;

(*g*) the "accumulated balance due" to an employee means the balance to his credit, or such portion thereof as may be claimable by him under the regulations of the fund, on the day he ceases to be an employee of the employer maintaining the fund; and

(*h*) the "regulations of a fund" means the special body of regulations governing the constitution and administration of a particular provident fund

The according and withdrawal of recognition

58-B (1) The Commissioner of Income-tax may accord recognition to any provident fund which, in his opinion, satisfies the conditions prescribed in section 58-C and the rules made thereunder, and may, at any time, withdraw such recognition if, in his opinion, the provident fund contravenes any of those conditions

OLD	NEW
(2) The Central Government may, at its discretion direct the Commissioner of Income-tax to refuse to accord recognition to any provident fund, or may, at any time, withdraw recognition from any recognised provident fund	*Omitted*
(3) An order according recognition shall take effect on such date as the Commissioner may fix in accordance with any rules the Central Board of Revenue may make in this behalf, such date not being later than the last day of the financial year in which the order is made	(2) An order according recognition shall take effect on such date as the Commissioner may fix in accordance with any rules the Central Board of Revenue may make in this behalf, such date not being later than the last day of the financial year in which the order is made
(4) An order withdrawing recognition shall take effect from the day on which it is made	(3) An order withdrawing recognition shall take effect from the day on which it is made
(5) An employer objecting to an order of the Commissioner refusing to recognise a provident fund may appeal, within sixty	(4) An employer objecting to an order of the Commissioner refusing to recognise *or an order with-drawing recognition from* a

NOTES

Sub-section (2) of section 58-*B* which gave power to the Central Government to refuse recognition to or withdraw recognition from a provident fund, is omitted

OLD	NEW
days of such order, to the Central Board of Revenue	provident fund may appeal, within sixty days of such order, to the Central Board of Revenue

The appeal shall be in the form and shall be verified in the manner prescribed by the Central Board of Revenue

58-C Conditions to be satisfied by a recognised provident fund

(1) In order that a provident fund may receive and retain recognition, it shall satisfy the conditions set out below and any other conditions which the Central Government may, by rule, prescribe—

(*a*) All employees shall be employed in India, or shall be employed by an employer whose principal place of business is in British India

(*b*) The contributions of an employee in any year shall be a definite proportion of his salary for that year, and shall be deducted by the employer from the employee's salary in that proportion, at each periodical payment of such salary in that year, and credited to the employee's individual account in the fund

(*c*) Subject to the provisions of section 58-D, the contributions of an employer to the individual account of an employee in any year shall not exceed the amount of the contributions of the employee in that year, and shall be credited to the employee's individual account at intervals not exceeding one year

(*d*) The fund shall consist of contributions as above specified, of accumulations thereof, and of interest (simple and compound), credited in respect of such contributions and accumulations, and of securities purchased therewith, and of no other sums

(*e*) The fund shall be vested in two or more trustees or in the Official Trustee under a trust which shall not be revocable save with the consent of all the beneficiaries

(*f*) The employer shall not be entitled to recover any sum whatsoever from the fund, save in cases where the employee is dismissed for misconduct or voluntarily leaves his employment otherwise than on account of ill-health or other unavoidable cause before the expiration of the term of service specified in this behalf in the regulations of the fund

In such cases the recoveries made by the employer shall be limited to the contributions made by him to the individual account of the employee, and to interest (simple and compound) credited in respect of such contributions and accumulations thereof, in accordance with the regulations of the fund

(*g*) The accumulated balance due to an employee shall be payable on the day he ceases to be an employee of the employer maintaining the fund

(*h*) Save as provided in clause (*g*), or in accordance with such conditions and restrictions as the Central Government may, by rules,

prescribe, no portion of the balance to the credit of an employee shall be payable to him

(2) Where there is a repugnance between any regulation of a recognised provident fund and any provision of this Chapter or of the rules made thereunder, the regulation shall, to the extent of the repugnance, be of no effect

The Commissioner may, at any time, require that such repugnance shall be removed from the regulations of the fund

58-D *Power to relax restriction of employer's contributions in certain cases* Subject to any rules which the Central Government may make in this behalf, the Commissioner may, in respect of any particular fund, relax the provisions of condition (*c*) of sub-section (1) of section 58-C—

(*a*) so as to permit the payment of larger contributions by an employer to the individual accounts of employees whose salary does not exceed five hundred rupees per mensem, and

(*b*) so as to permit the crediting by employers to the individual accounts of employees of periodical bonuses or other contributions of a contingent nature, where the calculation and payment of such bonuses or other contributions is provided for on definite principles by the regulations of the fund

58-E *Annual accretion deemed to be income received* The annual accretion in any year to the balance at the credit of an employee participating in a recognised provident fund shall be deemed to have been received by him in that year and shall be included in his total income for that year, and, subject to the exemptions specified in section 58-F, shall be liable to income-tax and super-tax

Provided that, for the purpose of sub-section (3) of section 15, out of such annual accretion only the employee's own contributions shall be included in his total income

OLD	NEW
58-F *Exemption of annual accretion from income tax* (1) An employee shall not be liable to pay income-tax on contributions to his individual account in a recognised provident fund, in so far as the aggregate of such contributions in any	**58-F** *Exemption of annual accretion from income-tax* (1) An employee shall not be liable to pay income-tax on contributions to his individual account in a recognised provident fund, in so far as the aggregate of such contributions in any

NOTES

Section 58-*F* (Recognised Provident Funds) The limit of exemption is cut down to Rs 6,000 as in section 15 and in order to simplify the provision regarding the exemption of interest on the employee's accumulated balance it is provided that such interest shall be exempted in so far as it does not exceed one-third of the employee's salary for the year

OLD	NEW
year does not exceed one-sixth of his salary in that year.	year does not exceed one-sixth of his salary in that year *or six thousand rupees, whichever is less*
(2) In the accounts of a recognised provident fund, the contributions exempted from income-tax under sub-section (1) and accumulations thereof shall be shown separately, and interest thereon shall be calculated and shown separately Such interest shall be exempt from payment of income-tax, in so far as it is allowed at a rate not exceeding such rate as the Central Government may, by notification in the Official Gazette fix in this behalf	(2) *Interest credited on the accumulated balance of any employee in a recognized provident fund shall be exempt from payment of income-tax, if and in so far as it does not exceed one-third of the salary of the employee for the year concerned and* in so far as it is allowed at a rate not exceeding such rate as the Central Government may, by notification in the Official Gazette fix in this behalf

58-G (1) Where the accumulated balance due to an employee participating in a recognised provident fund becomes payable, such accumulated balance shall be exempt from payment of super-tax except to the extent of an amount equal to the aggregate of the amounts of super-tax on annual accretions that would have been payable under section 58-*E* up to the first day of April, 1933, if the Indian Income-tax (Second Amendment) Act, 1933, had come into force on the 15th March, 1930

Exemption of accumulated balance from income tax and super tax

(2) Where an employee participating in a recognised provident fund has rendered continuous service with his employer for a period of not less than five years, and the accumulated balance due to him becomes payable, such accumulated balance shall be exempt from payment of income-tax and shall be excluded from the computation of his total income

Provided that the Commissioner of Income-tax may allow such exemption and exclusion where the employee has rendered continuous service with the employer for a period of less than five years, if, in his opinion, the service has been terminated by reason of the employee's ill-health, or by the contraction or discontinuance of the employer's business, or other cause beyond the control of the employee

OLD	NEW
(3) Where exemption from payment of income-tax is not al-	(3) Where exemption from payment of income-tax is not al-

NOTES

Section 58-G (2).—It is the intention to give the benefits of participation in a recognised Provident Fund only to those employees who have rendered continuous service with the employer for at least 5 years. Section 58-G (3) [illegible] to [illegible] the employee belonging to a recognised Provident Fund who has not rendered 5 years' service in the same position as he would have been if the fund had not been recognised.

OLD	NEW
lowed under the provisions of sub-section (2), the Income-tax Officer shall calculate the total of the various sums of income-tax from the payment of which the contributions and interest credited to the employee's individual account have been exempted under the provisions of sub-sections (1) and (2) of section 58-*F*, and such total shall be payable by the employee, in addition to any other income-tax for which he may be liable for the year in which the accumulated balance due to him becomes payable	lowed under the provisions of sub-section (2), the Income-tax Officer shall calculate the total of the various sums of income-tax *and super-tax which would have been payable by the employee in respect of his total income for each of the years concerned if the fund had not been a recognized provident fund, and the amount by which such total exceeds the total of all sums paid by or on behalf of such employee by way of tax for such years shall be payable by the employee in addition to any other income-tax and super-tax* for which he may be liable for the year in which the accumulated balance due to him becomes payable

58-H The trustees of a recognised provident fund, or other person authorised by the regulations of the fund to make payment of accumulated balances due to employees, shall, at the time an accumulated balance due to an employee is paid, deduct therefrom any income-tax payable under sub-section (3) of section 58-*G* and any income-tax and super-tax payable on an employee's total income as determined under sub-section (3) of section 58-*J*, and sub-sections (4) to (9) of section 18 shall apply as if the sum to be deducted were income-tax payable under the head "Salaries"

Deduction at source of Income tax payable on accumulated balances due

58-I (1) The accounts of a recognised provident fund shall be maintained by the trustees of the fund and shall be in such form and for such periods, and shall contain such particulars as the Central Board of Revenue may prescribe

Accounts of recognised provident funds

(2) The accounts shall be open to inspection at all reasonable times by Income-tax authorities, and the trustees shall furnish to the Income-tax Officer such abstracts thereof as the Central Board of Revenue may prescribe

58-J (1) Where recognition is accorded to a provident fund with existing balances, an account shall be made of the fund up to the day before the day on which the recognition takes effect, showing the balance to the credit of each employee on such day, and containing such further particulars as the Central Board of Revenue may prescribe

Treatment of balances in newly recognised provident funds

(2) The account shall also show in respect of the balance to the credit of each employee the amount thereof which is to be transferred to that employee's account in the recognised provident fund, and such amount (hereinafter called his transferred balance) shall be shown as the balance to his credit in the recognised provident fund on the date on which the recognition of the fund takes effect, and sub-sections (3) and (4) shall apply thereto

Any portion of the balance to the credit of an employee in the existing fund which is not transferred to the recognised fund shall be excluded from the accounts of the recognised fund and shall be liable to income-tax and super-tax in accordance with the provisions of this Act other than this Chapter

(3) Subject to such rules as the Central Board of Revenue may make in this behalf, the Income-tax Officer shall make a calculation of the aggregate of all sums comprised in a transferred balance which would have been liable to income-tax if this Chapter had been in force from the date of the institution of the fund, without regard to any tax which may have been paid on any such sum, and such aggregate (if any) shall be deemed to be income received by the employee in the year in which the recognition of the fund takes effect, and shall be included in the employee's total income for that year, and, for the purposes of assessment, the remainder of the transferred balance shall be disregarded, but no other exemption or relief, by way of refund or otherwise, shall be granted in respect of any sum comprised in such transferred balance

Provided that, in cases of serious accounting difficulty the Commissioner shall have power, subject to the said rules, to make a summary calculation of such aggregate

(4) Notwithstanding anything contained in condition (*h*) of sub-section (1) of section 58-*C*, an employee, in order to enable him to pay the amount of tax assessed on his total income as determined under sub-section (3), shall be entitled to withdraw from the balance to his credit in the recognised provident fund a sum not exceeding the difference between such amount and the amount to which he would have been assessed if the transferred balance had not been included in his total income

(5) Nothing in this section shall affect the rights of the persons administering an unrecognised provident fund or dealing with it, or with the balance to the credit of any individual employee, before recognition is accorded, in any manner which may be lawful

58-K (1) Where an employer who maintains a provident fund (whether recognised or not) for the benefit of his employees and has not transferred the fund or any portion of it, transfers such fund or

Treatment of fund transferred by employer to trustee

NOTES

Section 58-*K* (2) is amended so as to ensure that an employer will not be [illegible] payments which would be disallowed under section 10 (4) (c).

portion to trustees in trust for the employees participating in the fund, the amount so transferred shall be deemed to be of the nature of capital expenditure.

OLD	NEW
(2) When an employee participating in such fund is paid the accumulated balance due to him therefrom, any portion of such balance as represents his share in the amount so transferred to the trustee (without addition of interest, and exclusive of the employee's contributions and interest thereon) shall be deemed to be an expenditure by the employer within the meaning of clause (ix) of sub-section (2) of section 10, incurred in the year in which the accumulated balance due to the employee is paid	(2) When an employee participating in such fund is paid the accumulated balance due to him therefrom, any portion of such balance as represents his share in the amount so transferred to the trustee (without addition of interest, and exclusive of the employee's contributions and interest thereon) shall, *if the employer has made effective arrangements to secure that tax shall be deducted at source from the amount of such share when paid to the employee,* be deemed to be an expenditure by the employer within the meaning of *clause* (xii) of sub-section (2) of section 10, incurred in the year in which the accumulated balance due to the employee is paid

Provisions relating to rules

58-L (1) All rules made under this Chapter shall be subject to the provisions of sub-sections (4) and (5) of section 59

(2) In addition to any power conferred by this Chapter, the Central Government may makes rules—

(*a*) prescribing the statements and other information to be submitted with an application for recognition,

(*b*) limiting the contributions to a recognised provident fund by employees of a company who are shareholders in the company;

(*c*) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or creation of a charge upon, his beneficial interest in a recognised provident fund;

(*d*) determining the extent to and the manner in which exemption from payment of income-tax and super-tax may be granted in respect of contributions and interest credited to the individual accounts of employees in a provident fund from which recognition has been withdrawn; and

(*e*) generally, to carry out the purposes of this Chapter and to secure such further control over the recognition of provident funds and the administration of recognised provident funds as it may deem requisite

Application of this Chapter

58-M This Chapter shall not apply to any provident fund to which the Provident Funds Act, 1925, applies

NEW

CHAPTER IX-B [NEW]

Special Provisions Relating to certain classes of Superannuation Funds

Definitions

58-N *In this Chapter, unless there is anything repugnant in the subject or context —*

(a) 'approved superannuation fund' means a superannuation fund or any part of a superannuation fund which has been and continues to be approved by the Central Board of Revenue in accordance with the provisions of this Chapter,

(b) 'employer', 'employee' and 'contribution' have, in relation to superannuation funds, the meanings assigned to those expressions in Section 58-A in relation to provident funds,

(c) 'ordinary annual contribution' means an annual contribution of a fixed amount or an annual contribution computed on some definite basis by reference to the earnings, the contributions or the number of members of the fund

Approval and withdrawal of approval

58-O (1) *The Central Board of Revenue may accord approval to any superannuation fund or any part of a superannuation fund which in its opinion complies with the requirements of section 58-P, and may at any time withdraw such approval, if in its opinion the circumstances of the fund or part cease to warrant the continuance of the approval*

(2) *The Central Board of Revenue shall communicate in writing to the trustees of the fund the grant of approval with the date on which the approval is to take effect, and, where the approval is granted subject to conditions, those conditions*

(3) *The Central Board of Revenue shall communicate in writing to the trustees of the fund any withdrawal of approval with the reasons for such withdrawal and the date on which the withdrawal is to take effect*

(4) *The Central Board of Revenue shall neither refuse nor withdraw approval to any superannuation fund or any part of a superannuation fund unless it has given the trustees of that fund a reasonable opportunity of being heard in the matter*

Conditions for approval

58-P *In order that a superannuation fund may receive and retain approval the following conditions shall be satisfied namely —*

NOTES

This Chapter IX-B relating to Superannuation Funds was inserted by the [illegible] and as in [illegible] provisions for exemptions of contributions to and for interest on [illegible] of Provident Funds, makes similar provisions in case of Superannuation Funds with such amendments as are necessary having regard to the [illegible] types of funds

NEW

(a) the fund shall be a fund established under an irrevocable trust in connection with a trade or undertaking carried on in British India,

(b) the fund shall have for its sole purpose the provision of annuities for employees in the trade or undertaking on their retirement at or after a specified age or on their becoming incapacitated prior to such retirement, or for the widows, children or dependants of persons who are or have been such employees on the death of those persons, and

(c) the employer in the trade or undertaking shall be a contributor to the fund

Provided that the Central Board of Revenue may, if it thinks fit and subject to such conditions, if any, as it thinks proper to attach to the approval, approve a fund or any part of a fund—

(i) notwithstanding that the rules of the fund provide for the return in certain contingencies of contributions paid to the fund, or

(ii) if the main purpose of the fund is the provision of such annuities as aforesaid, notwithstanding that such provision is not its sole purpose, or

(iii) notwithstanding that the trade or undertaking in connection with which the fund is established is carried on only partly in British India

Application for approval

58-Q (1) *An application for approval of a superannuation fund or part of a superannuation fund for any year of assessment shall be made in writing before the end of that year by the trustees of the fund to the Income-tax Officer, and shall be accompanied by a copy of the instrument under which the fund is established and by two copies of the rules and of the accounts of the fund for the last year for which such accounts have been made up The Central Board of Revenue may require such further information to be supplied as it thinks proper*

(2) If any alteration in the rules, constitution, objects or conditions of the fund is made at any time after the date of the application for approval, the trustees of the fund shall forthwith communicate such alteration to the Income-tax Officer, and in default of such communication any approval given shall, unless the Central Board of Revenue otherwise orders, be deemed to have been withdrawn from the date on which the alteration took effect

Exemption of super-annuation fund from income-tax

58-R *Income derived from investments or deposits of an approved superannuation fund shall be exempt from payment of income-tax, and any sum paid by an employer or an employee by way of contribution towards an approved superannuation fund shall, in the case of an employer, be deducted in computing his income, profits or gains for the purpose of assessment, and, in the case*

NEW

of an employee, be treated for all the purposes of this Act as if it were a sum to which the provisions of section 15 apply

Provided that no such exemption shall be allowable to an employee in respect of any sum which is not an ordinary annual contribution

Provided further that where a contribution by an employer is not an ordinary annual contribution it shall, for the purposes of this section, be treated, as the Central Board of Revenue may direct either as an expense incurred in the year in which the sum is paid, or as an expense to be spread over such period of years as the Central Board of Revenue thinks proper

Treatment of repaid contributions

58-S (1) *Where any contributions (including interest on contributions, if any) are repaid to an employee, the amount so repaid shall be deemed for the purposes of income-tax and super-tax to be income of the employee for that year*

(2) *Where any contributions (including interest on contributions, if any) are repaid to an employee during his lifetime but not at or in connection with the termination of his employment, income-tax on the amount so repaid or paid shall except in the case of an employee whose employment was carried on abroad, be deducted by the trustees of the fund at the average rate of tax at which the employee was liable to income-tax and super-tax, during the preceding three years or during such period, if less than three years, as he was a member of the fund, and shall be paid by the trustees to the credit of the Central Government within the prescribed time and in such manner as the Central Board of Revenue may direct*

Deduction from pay of, and contributions on behalf of employees to be included in return under section 21

58-T *Where an employer deducts from the emoluments paid to an employee or pays on his behalf any contributions of that employee to an approved superannuation fund, he shall include all such deductions or payments in the return which he is required to furnish under section 21.*

Liabilities of trustees on cessation of approval of fund

58-U *If a fund or a part of a fund for any reason ceases to be an approved superannuation fund, the trustees of the fund shall nevertheless remain liable to account for tax on any sum paid—*

(a) on account of returned contributions (including interest on contributions if any), and

(b) in commutation of or in lieu of annuities,

in so far as the sum so paid is in respect of contributions made before the fund or part of the fund ceased to be an approved fund under the provisions of this Chapter

NEW

58-V *The trustees of an approved superannuation fund and any employer who contributes to an approved superannuation fund shall, when required by notice from the Income-tax Officer, within twenty-one days of the date of such notice:—*

Particulars to be furnished in respect of Superannuation funds

(a) furnish to the Income-tax Officer a return containing such particulars of contributions made to the fund as the notice may require,

(b) prepare and deliver to the Income-tax Officer a return containing—

(i) the name and place of residence of every person in receipt of an annuity from the fund,

(ii) the amount of the annuity payable to each annuitant,

(iii) particulars of every contribution (including interest on contributions, if any) returned to the employer or to employees, and

(iv) particulars of sums paid in commutation or in lieu of annuities,

(c) furnish to the Income-tax Officer a copy of the accounts of the fund to the last date prior to such notice to which such accounts have been made up, together with such other information and particulars as the Central Board of Revenue may reasonably require

CHAPTER X

MISCELLANEOUS

59 (1) The Central Board of Revenue may, subject to the control of the Central Government, make rules for carrying out the purposes of this Act and for the ascertainment and determination of any class of income Such rules may be made for the whole of British India or for such part thereof as may be specified

Power to make rules

(2) Without prejudice to the generality of the foregoing power, such rules may—

(*a*) prescribe the manner in which, and the procedure by which, the income, profits and gains shall be arrived at in the case of—

(*i*) incomes derived in part from agriculture and in part from business,

OLD	NEW
(*ii*) insurance companies	*Omitted*
(*iii*) persons residing out of British India,	(*ii*) persons residing out of British India;

(*b*) prescribe the procedure to be followed on applications for refunds,

NOTES

Section 59 is amended as so to remove any doubts as to whether the rules regarding the computation of life insurance business are *ultra vires* in so far as they vary the substantive provisions of the Act

(c) provide for such arrangements with His Majesty's Government as may be necessary to enable the appropriate relief to be granted under section 27 of the Finance Act, 1920, or under section 49 of this Act;

(d) prescribe the year which, for the purpose of relief under section 49, is to be taken as corresponding to the year of assessment for the purposes of section 27 of the Finance Act, 1920; and

(e) provide for any matter which by this Act is to be prescribed

(3) In cases coming under clause (a) of sub-section (2), where the income, profits and gains liable to tax cannot be definitely ascertained, or can be ascertained only with an amount of trouble and expense to the assessee which, in the opinion of the Central Board of Revenue, is unreasonable the rules made under that sub-section may—

(a) prescribe methods by which an estimate of such income, profits and gains may be made, and

(b) in cases coming under sub clause (i) of clause (a) of sub-section (2), prescribe the proportion of the income which shall be deemed to be income, profits and gains liable to tax,

and an assessment based on such estimate or proportion shall be deemed to be duly made in accordance with the provisions of this Act

(4) The power to make rules conferred by this section shall, except on the first occasion of the exercise thereof, be subject to the condition of previous publication

(5) Rules made under this section shall be published in the Official Gazette, and shall thereupon have effect as if enacted in this Act

Power to make exemptions etc

60 (1) The Central Government may, by notification in the Official Gazette, make an exemption, reduction in rate or other modification, in respect of income-tax in favour of any class of income, or in regard to the whole or any part of the income of any class of persons

NOTES

Section 60 —Note on Section 7, (1) Explanation (2), may be referred to

The alteration of the clause has the effect, first, of substituting the words "the appropriate relief" in sub-section (2) of section 60 of the Act for the expression "such relief as it may think fit" which we consider is unduly wide and secondly, of abolishing for the future the power to make any exemptions, reductions or modifications under sub-section (1) It is necessary to keep sub-section (1) so that orders [illegible] exemptions now in existence may be made when necessary under the implied power imported into the sub-section by section 21 of the General Clauses Act, 1897 We have received an assurance that it is the intention of Government in conformity with the general scheme [illegible] in the Bill and simultaneously with its coming into operation [illegible] the exemptions numbered 20 21 22 and 2[illegible] in the list set forth in paragraph 17 of Part III of the Income-tax Manual —*Select Committee Report*

OLD	NEW.
(2) Where, by reason of any portion of an assessee's salary being paid in arrears or in advance, or by reason of his having received in any one financial year salary for more than twelve months, his income is assessed at a rate higher than that at which it would otherwise have been assessed, the Central Government may grant such relief as it may think fit	(2) Where, by reason of any portion of an assessee's salary being paid in arrears or in advance, or by reasons of his having received in any one financial year salary for more than twelve months *or a payment which is under the provisions of sub-section* (1) *of section* 7 *a profit in lieu of salary*, his income is assessed at a rate higher than that at which it would otherwise have been assessed, the Central Government may grant *the appropriate relief*
	(3) *After the commencement of the Indian Income-tax (Amendment) Act*, 1939, *the power conferred by sub-section* (1) *shall not be exerciseable except for the purpose of rescinding an exemption, reduction or modification already made*
61 Appearance by authorised representative. Any assessee, who is entitled or required to attend before any Income-tax authority in connection with any proceeding under this Act, may attend either in person or by any person authorised by him in writing in this behalf	**61** Appearance by authorised representative. (1) *Any assessee, who is entitled or required to attend before any Income-tax authority in connection with any proceeding under this Act otherwise than when required under section 37 to attend personally for examination on oath or affirmation, may attend by a person authorized by him in writing in this behalf, being a relative of or a person regularly employed by the*

NOTES

Section 61 is amended so as to correct abuses in respect of the representation of assessees The provisions are self explanatory and they give the assessee a wide field from which to choose his representative The amended section does not affect existing Income-tax practitioners, however incompetent, so long as they are not guilty of misconduct in connection with income-tax proceedings

We have substituted a more accurate revised definition of "accountant" We have also recast sub section (3) of section 61 of the Act, as amended by the Bill, so as to remove from the Commissioner of Income-tax the power to decide whether a lawyer or an accountant has been guilty of misconduct in connexion with income-tax proceedings We consider that the authorities ordinarily responsible for disciplinary action in the two professions concerned should deal with such matters as with other questions of discipline in those professions —*Select Committee Report*

OLD	NEW.
	assessee, or a lawyer or accountant or Income-tax practitioner, and not being disqualified by or under sub-section (3)

(2) In this section,—

(i) a person regularly employed by the assessee shall include any officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings,

(ii) 'lawyer' means a Barrister-at-Law or Solicitor or any other person entitled to plead in any Court of law in British India;

(iii) 'accountant' means a registered accountant enrolled in the Register of Accountants maintained by the Central Government under the Auditors Certificate Rules, 1932, or a holder of a restricted certificate under Restricted Certificate Rules 1932, or a member of an association of accountants recognized in this behalf by the Central Board of Revenue;

(iv) 'Income-tax practitioner' means—

(a) any person who, before the 1st day of April, 1938, attended before an Income-tax authority on behalf of any assessee otherwise than in the capacity of an employee or relative of that assessee;

(b) any person who has passed any accountancy examination recognized in this behalf by the Central Board of Revenue, or

(c) any person who has acquired such educational qualifications as the Central Board of Revenue may prescribe for this purpose

(3) No person who has been dismissed from Government ser-

OLD.	NEW.
	vice after the 1st day of April, 1938, shall be qualified to represent an assessee under sub-section (1); and if any lawyer or registered accountant is found guilty of misconduct in connexion with any income-tax proceedings by the authority empowered to take disciplinary action against members of the profession to which he belongs, or if any other person is found guilty of such misconduct by the Commissioner of Income-tax, the Commissioner of Income-tax may direct that he shall be thenceforward disqualified to represent an assessee under sub-section (1)
	Provided that—
	(a) no such direction shall be made in respect of any person unless he is given a reasonable opportunity of being heard,
	(b) any person against whom such direction is made may, within one month of the making of the direction, appeal to the Central Board of Revenue to have the direction cancelled, and
	(c) no such direction shall take effect until one month from the making thereof or, when an appeal is preferred, until the disposal of the appeal

Receipts to be given

62 A receipt shall be given for any money paid or recovered under this Act

Service of notices

63 (1) A notice or requisition under this Act may be served on the person therein named either by post or, as if it were a summons issued by a Court, under the Code of Civil Procedure, 1908

(2) Any such notice or requisition may, in the case of a firm or a Hindu undivided family, be addressed to any member of the firm or to the manager, or any adult male member of the family and, in the case of any other association of * *persons* be addressed to the principal officer thereof

*'Persons' was substituted for 'individual' by the Amending Act, 1939

OLD	NEW
64. (1) Where an assessee carries on business at any place, he shall be assessed by the Income-tax Officer of the area in which that place is situate or, where the business is carried on in more places than one, by the Income-tax Officer of the area in which his principal place of business is situate.	**64.** (1) Where an assessee carries on *a business, profession or vocation* at any place, he shall be assessed by the Income-tax Officer of the area in which that place is situate or, where the *business, profession or vocation* is carried on in more places than one, by the Income-tax Officer of the area in which *the principal place of his business, profession or vocation* is situate.

Place of assessment

(2) In all other cases, an assessee shall be assessed by the Income-tax Officer of the area in which he resides.

(3) Where any question arises under this section as to the place of assessment, such question shall be determined by the Commissioner, or, where the question is between places in more provinces than one, by the Commissioners concerned, or, if they are not in agreement, by the Central Board of Revenue:

Provided that, before any such question is determined, the assessee shall have had an opportunity of representing his views.

OLD	NEW
	Provided further that the place of assessment shall not be called in question by an assessee if he has made a return in response to the notice under sub-section (1) of section 22 and has stated therein the principal place wherein he carries on his business, profession or vocation or if he has not made such a return shall not be called in question after the expiry of the time allowed by the notice under sub-section (2) of section 22 or under section 34 for the making of a return.

NOTES

Section 64 (3) is amended so as to debar the assessee from questioning the place of assessment after the time allowed by notice under section 22 (2) for [illegible] a return. Assessees frequently obstruct income-tax proceedings by raising questions of jurisdiction and the amendment is designed to check this practice. The [illegible] is to make it clear that the Income-tax Officer has to refer to the [illegible] a question regarding the place of assessment.

We have [illegible] the [illegible] to sub-section (3) of section 64 of the Act by providing [illegible] from raising the question of the place of assessment [illegible]

OLD.	NEW.
	Provided further that if the place of assessment is called in question by an assessee the Income-tax Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination under this sub-section before assessment is made "

(4) Notwithstanding anything contained in this section, every Income-tax Officer shall have all the powers conferred by or under this Act on an Income-tax Officer in respect of any income, profits or gains accruing, or arising or received within the area for which he is appointed

Indemnity

65 Every person deducting, retaining or paying any tax in pursuance of this Act in respect of income belonging to another person is hereby indemnified for the deduction, retention or payment thereof

Statement of case by Commissioner to High Court

*66 (1) If, in the course of any assessment under this Act or any proceeding in connection therewith other than a proceeding under Chapter VIII, a question of law arises, the Commissioner may, either on his own motion or on reference from any Income-tax authority subordinate to him, draw up a statement of the case and refer it with his own opinion thereon to the High Court

OLD.	NEW.
(2) Within sixty days of the date on which he is served with notice of an order under section	(2) Within sixty days of the date on which he is served with notice of an order under section 31

NOTES

place of business in a return made, and by extending the time within which the question can be raised in other cases to the end of the time allowed for a return after a specific notice under section 22 (2) or 34 —*Select Committee Report*

*When Part II of the Indian Income tax (Amendment) Act—Act VII of 1939 comes into force the section should be read with the following amendments [see p 1]

Statement of case by Appellate Tribunal to High Court

Amendment Act Section 92 —*In section* 66 *of the said Act*—

(*a*) *for sub sections* (1), (2), (3), (3-*A*), (4) *and* (5), *the following sub sections shall be substituted, namely* —

(1) *Within sixty days of the date upon which he is served with notice of an order under sub-section* (1) *of section* 33 *the assessee or the Commissioner may, by application in the prescribed form, accompanied where application is made by the assessee by a fee of one hundred rupees, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order, and the Appellate Tribunal shall within ninety days of the receipt of such application draw up a statement of the case and refer it to the High Court*

Provided that, if in the exercise of its powers under sub-section (2), *the Appellate Tribunal refuses to state a case which it has been required by the assessee to state, the assessee may, within thirty days from the date on which he receives notice of the refusal to state the case, withdraw his application, and, if he does so, the fee paid shall be refunded*

(2) *If on any application being made under sub section* (1) *the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the assessee or the*

OLD.	NEW
31 or section 32, or of an order under section 33 enhancing an assessment or otherwise prejudicial to him, or of a decision by a Board of Referees under section 33-*A*, the assessee in respect of whom the order or decision was passed may, by application accompanied by a fee of one hundred rupees or such lesser sum as may be prescribed, require the Commissioner to refer to the High Court any question of law arising out of such order or decision and the Commissioner shall, within sixty days of the receipt of such application, draw up a statement of the case and refer it with his own opinion thereon to the High Court	or section 32, or of an order under section 33 enhancing an assessment or otherwise prejudicial to him, * * * the assessee in respect of whom the order was passed may, by application accompanied by a fee of one hundred rupees or such lesser sum as may be prescribed, require the Commissioner to refer to the High Court any question of law arising out of such order * * * and the Commissioner shall, within sixty days of the receipt of such application, draw up a statement of the case and refer it with his own opinion thereon to the High Court:
Provided that a reference shall lie from an order under section 33 only on a question of law arising out of that order itself, and not on a question of law arising out of a previous order under section 31 or section 32, revised by the order under section 33	Provided that a reference shall lie from an order under section 33 only on a question of law arising out of that order itself, and not on a question of law arising out of a previous order under section 31, * * * revised by the order under section 33

Provided further that if, in exercise of his power of revision under section 33 the Commissioner decides the question, or if the Commissioner rejects the application on the ground that it is time-barred or otherwise incompetent or if, in exercise of his powers under sub-section (3), the Commissioner refuses to state the case, the assessee may within thirty days from the date on which he receives notice of the order passed by the Commissioner withdraw his application, and if he does so, the fee paid shall be refunded

(3) If, on any application being made under sub-section (2), the Commissioner refuses to state the case on the ground that no question of law arises, the assessee may within six months from the

NOTES

date on which he is served with notice of the refusal apply to the High Court, and the High Court, if it is not satisfied of the correctness of the Commissioner's decision, may require the Commissioner to state the case and to refer it, and, on receipt of any such requisition, the Commissioner shall state and refer the case accordingly

(3-A) If, on any application being made under sub-section (2), the Commissioner rejects it on the ground that it is time barred, the assessee may, within two months from the date on which he is served with notice of the order of the Commissioner, apply to the High Court, and the High Court, if it is not satisfied of the correctness of the Commissioner's decision, may require the Commissioner to treat the application as made within the time allowed under sub-section (2)

(4) If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, the Court may refer the case back to the Commissioner by whom it was stated to make such additions thereto or alterations therein as the Court may direct in that behalf

(5) The High Court upon the hearing of any such case shall decide the questions of law raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and shall send to the Commissioner by whom the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Commissioner shall dispose of the case accordingly, or, if the case arose on a reference from any Income-tax authority subordinate to him, shall forward a copy of such judgment to such authority who shall dispose of the case conformably to such judgment.

(6) Where a reference is made to the High Court on the application of an assessee, the costs shall be in the discretion of the Court

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correctness of the Appellate Tribunal's decision, may require the Appellate Tribunal to treat the application as made within the time allowed under sub section (1)

(4) *If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, the Court may refer the case back to the Appellate Tribunal to make such additions thereto or alterations therein as the Court may direct in that behalf*

(5) *The High Court upon the hearing of any such case shall decide the questions of law raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded and shall send a copy of such judgment under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgment)*

(b) *in sub section* (6) *the words 'on the application of an assessee' shall be omitted*

(b) *in sub section* (7 *A*), *for the words, brackets, figures and letter "under sub section* (3) *or sub section* (3-*A*)", *the words, brackets and figures "under sub-section* (2) *or sub section* (3)" *shall be substituted*

Section 66 is amended so as to allow the High Court in cases of appeal to the Privy Council, where a refund of the tax to the assessee who has succeeded before the High Court is inadvisable, to authorise the Commissioner to withhold the refund If the assessee succeeds before the Privy Council he will get the refund with interest

(7) Notwithstanding that a reference has been made under this section to the High Court, income-tax shall be payable in accordance with the assessment made in the case.

OLD.	NEW
Provided that, if the amount of an assessment is reduced as a result of such reference, the amount overpaid shall be refunded with such interest as the Commissioner may allow	Provided that, if the amount of an assessment is reduced as a result of such reference, the amount overpaid shall be refunded with such interest as the Commissioner may allow, *unless the High Court, on intimation given by the Commissioner within thirty days of the receipt of the result of such reference that he intends to ask for leave to appeal to His Majesty in Council makes an order authorizing the Commissioner to postpone payment of such refund until the disposal of the appeal to His Majesty in Council*

(7-A) Section 5 of the Indian Limitation Act, 1908, shall apply to an application to the High Court by an assessee under sub-section (3) or sub-section (3 A)

(8) For the purposes of this section "the High Court" means—

(a) in relation to the North-West Frontier Province and British Baluchistan, the High Court of Judicature at Lahore	(a) in relation to * * * British Baluchistan the High Court of Judicature at Lahore

(b) in relation to the province of Ajmer-Merwara, the High Court of Judicature at Allahabad; and

(c) in relation to the province of Coorg, the High Court of Judicature at Madras

References to be heard by benches of High Courts and appeal to lie in certain cases to Privy Council

66-A (1) When any case has been referred to the High Court under section 66, it shall be heard by a Bench of not less than two Judges of the High Court, and in respect of such case the provisions of section 98 of the Code of Civil Procedure, 1908, shall, so far as may be apply notwithstanding anything contained in the Letters Patent of any High Court established by Letters Patent or in any other law for the time being in force

Provided that where in any reference heard by the Bench of the Court of the Judicial Commissioner of the North-West Frontier Province a difference of opinion arises between the Judi-

OLD	NEW
	cial Commissioner and the Judge of the said Court, the opinion of the Judicial Commissioner shall prevail

(2) An appeal shall lie to His Majesty in Council from any judgment of the High Court delivered on a reference made under section 66 in any case which the High Court certifies to be a fit one for appeal to His Majesty in Council

(3) The provisions of the Code of Civil Procedure, 1908, relating to appeals to His Majesty in Council shall, so far as may be, apply in the case of appeals under this section in like manner as they apply in the case of appeals from decrees of a High Court

Provided that nothing in this sub-section shall be deemed to affect the provisions of sub-section (5) or sub-section (7) of section 66:

Provided further that the High Court may, on petition made for the execution of the order of His Majesty in Council in respect of any costs awarded thereby, transmit the order for execution to any Court subordinate to the High Court

(4) Where the judgment of the High Court is varied or reversed in appeal under this section, effect shall be given to the order of His Majesty in Council in the manner provided in sub-sections (5) and (7) of section 66 in the case of a judgment of the High Court

(5) Nothing in this section shall be deemed—

(*a*) to bar the full and unqualified exercise of His Majesty's pleasure in receiving or rejecting appeals to His Majesty in Council, or otherwise howsoever, or

(*b*) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals to His Majesty in Council, or their conduct before the said Judicial Committee.

Bar of suits in Civil Court

67 No suit shall be brought in any Civil Court to set aside or modify any assessment made under this Act, and no prosecution, suit or other proceeding shall lie against any Officer of the Crown for anything in good faith done or intended to be done under this Act

Computation of periods of limitation

67-A In computing the period of limitation prescribed for an appeal under this Act or for an application under section 66, the day on which the order complained of was made, and the time requisite for obtaining a copy of such order, shall be excluded

68 [*Repeals*] *Repealed by the Repealing Act*, 1927 (*XII of* 1927).

NEW

THE SCHEDULE

[*See section* 10 (7)]

RULES FOR THE COMPUTATION OF THE PROFITS AND GAINS OF INSURANCE BUSINESS

In the case of any person who carries on, or at any time in the preceding year carried on life insurance business, the profits and gains of such person from that business shall be computed separately from his income, profits or gains from any other business

2 *The profits and gains of life insurance business shall be taken to be either—*

(a) the gross external incomings of the preceding year from that business less the management expenses of that year, or

(b) the annual average of the surplus disclosed by the actuarial valuation made for the last inter-valuation period ending before the year for which the assessment is to be made, after adjusting such surplus so as to exclude from it any surplus or deficit included therein which was made in any earlier inter-valuation period and any expenditure other than expenditure which may under the provisions of section 10 *of this Act be allowed for in computing the profits and gains of a business,*

whichever is the greater

Provided that the amount to be allowed as management expenses shall not exceed—

(a) $7\frac{1}{2}$ *per cent of the premiums received during the preceding year in respect of single premium life insurance policies plus*

(b) in respect of the first year's premiums received in respect of other life insurance policies for which the number of annual premiums received is less than twelve or for which the number of years during which premiums are payable is less than twelve for each such premium or each such year $7\frac{1}{2}$ *per cent of such first year's premiums received during the preceding year, plus*

(c) 85 *per cent of the first year's premiums received during the preceding year in respect of other life insurance policies and* $8\frac{1}{2}$ *per cent of other premiums received during that year in respect of all life insurance policies other than single premium life insurance policies*

3 *In computing the surplus for the purpose of rule* 2—

(a) one-half of the amounts paid to or reserved for or expended on behalf of policyholders shall be allowed as a deduction

Provided that in the first such computation made under this rule of any such surplus no account shall be taken of any such amounts to the extent to which they are paid out of or in respect of any surplus brought forward from a previous inter-valuation period

(b) any amount either written off or reserved in the accounts or through the actuarial valuation balance sheet to meet depreciation of or loss on the realisation of securities or other assets, shall be allowed as a deduction, and any sums taken credit for in the accounts or actuarial valuation balance sheet on account of appreciation of or gains on the realisation of the securities or other assets shall be included in the surplus

Provided that if upon investigation it appears to the Income-tax Officer after consultation with Superintendent of Insurance that having due regard to the necessity for making reasonable provision for bonuses to participating policyholders and for contingencies, the rate of interest or other factor employed in determining the liability in respect of outstanding policies is materially inconsistent with the valuation of the securities and other assets so as artificially to reduce the surplus, such adjustment shall be made to the allowance for depreciation of, or to the amount to be included in the surplus in respect of appreciation of, such securities and other assets, as shall increase the surplus for the purposes of these rules to a figure which is fair and just,

(c) the whole amount of interest received in respect of any securities of the Central Government which have been issued or declared to be income-tax free shall be deducted

4 Where for any year an assessment is made in accordance with the annual average of a surplus disclosed by a valuation for an inter-valuation period exceeding twelve months, then, in computing the tax payable for that year, credit shall not be given in accordance with sub-section (5) of section 18 for the tax paid in the preceding year, but credit shall be given for the annual average of the income-tax paid by deduction at source from interest on securities or otherwise during such period

5 For the purposes of these rules—

(i) 'preceding year' means that year for which annual accounts are required to be prepared under the Insurance Act, 1938, immediately preceding the year for which the assessment is to be made or until the commencement of the Insurance Act, 1938, the previous year as defined in section 2 of this Act,

(ii) 'gross external incomings' means the full amount of incomings from interest, dividends, fines and fees and all other incomings from whatever source derived (except premiums received from policyholders and interest and dividends on any annuity fund) and includes also profits from reversions and on the sale or the granting of annuities, but excludes profits on the realisation of securities,

Provided that incomings including the annual value of the property occupied by the assessee, which but for the provisions of sub-section (7) of section 10 would have been assessable under section 9 shall be computed upon the basis laid down in the last named section, and that there shall be allowed from such gross incomings such deductions as are permissible under that section

(iii) 'management expenses' means the full amount of expenses (including commissions), incurred exclusively in the management of the business of life insurance and in the case of a company carrying on other classes of business as well as the business of life insurance in addition thereto a fair proportion of the expenses incurred in the general management of the whole business Bonuses or other sums paid to or reserved on behalf of policy-

holders, depreciation of, and losses on the realisation of, securities and any expenditure other than expenditure which may under the provisions of section 10 of this Act be allowed for in computing the profits and gains of a business are not management expenses for the purposes of these rules.

(iv) 'life insurance business' means life insurance business as defined in clause (11) *of section* 2 *of the Insurance Act,* 1938,

(v) 'securities' includes stocks and shares

6 *The profits and gains of any business of insurance other than life insurance shall be taken to be the balance of the profits disclosed by the annual accounts, copies of which are required under the Insurance Act* 1938, *to be furnished to the Superintendent of Insurance, after adjusting such balance so as to exclude from it any expenditure other than expenditure which may under the provisions of section* 10 *of this Act be allowed for in computing the profits and gains of a business Profits and losses on the realisation of investments, and depreciation and appreciation of the value of investments shall be dealt with as provided in rule* 3 *for the business of life insurance*

7 *The profits and gains of companies carrying on dividing society or assessment business shall be taken to be* 15 *per cent of the premium income of the previous year, or in the case of non-resident companies* 15 *per cent of the British Indian premium income of the previous year*

8 *The profits and gains of the British Indian branches of an insurance company not resident in British India, in the absence of more reliable data, may be deemed to be the proportion of the total world income of the company corresponding to the proportion which its British Indian premium income bears to its total premium income For the purpose of this rule, the total world income of life insurance companies not resident in British India whose profits are periodically ascertained by actuarial valuation shall be computed in the manner laid down in these rules for the computation of the profits and gains of life insurance business carried on in British India*

9 *These rules apply to the assessment of the profits of any business of insurance carried on by a mutual insurance company*

APPENDIX A

THE INDIAN INCOME-TAX (AMENDMENT) ACT, 1939

PART II

85 *After section 5 of the said Act the following section shall be inserted, namely:—*

5-A (1) *The Central Government shall appoint an Appellate Tribunal consisting of not more than ten persons to exercise the functions conferred on the Appellate Tribunal by this Act*

The Appellate Tribunal

(2) *The Appellate Tribunal shall consist of an equal number of judicial members and accountant members as hereinafter defined.*

(3) *A judicial member shall be a person who has exercised the powers of a District Judge or who possesses such qualifications as are normally required for appointment to the post of District Judge; and an accountant member shall be a person who has, for a period of not less than six years, practised professionally as a registered Accountant enrolled on the Register of Accountants maintained by the Central Government under the Auditors Certificate Rules,* 1932

Provided that the Central Government may appoint as an accountant member of the Tribunal any person not possessing the qualifications required by this sub-section, if it is satisfied that he has qualifications and has had adequate experience of a character which render him suitable for appointment to the Tribunal

(4) *The Central Government shall appoint a judicial member of the Tribunal to be president thereof*

(5) *The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted from members of the Tribunal by the president of the Tribunal*

(6) *A Bench shall consist of not less than two members of the Tribunal, and shall be constituted so as to contain an equal number of judicial members and accountant members, or so that the number of members of one class does not exceed the number of members of the other class by more than one*

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The provisions of Part II (Sections 85 to 92) of the amending Act do not come into force simultaneously with Part I (sections 2 to 84) but are to come into force not later than two years from the date appointed for the coming into force of Part I, (*viz*, 1st April 1939—*see* Notes, page 1,) as the Central Government may appoint [*See also* Notes under section 5-A, page 22]

(7) *If the members of a Bench differ in opinion on any point the point shall be decided according to the opinion of the majority, if there is a majority; but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the president of the Tribunal for hearing on such point or points by one or more of the other members of the Tribunal, and such point or points shall be decided according to the opinion of the majority of the members of the Tribunal who have heard the case, including those who first heard it*

(8) *Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure, and the procedure of Benches of the Tribunal in all matters arising out of the discharge of its functions, including the place at which the Benches shall hold their sittings*

Amendment of section 28

86 *In section 28 of the said Act,—*

(*a*) *in sub-section* (1) *and sub-section* (2), *for the words "or the Commissioner" the words "or the Appellate Tribunal", and for the words "he may direct" the words "he or it may direct" shall be substituted*

(*b*) *in sub-section* (5), *for the words "or a Commissioner who has made" the words "or the Appellate Tribunal on making" shall be substituted*

Omission of section 32

87 *Section 32 of the said Act shall be omitted.*

Appeals against orders of Appellate Assistant Commissioner

88 *For section 33 of the said Act the following section shall be substituted, namely —*

33 (1) *Any assessee objecting to an order passed by an Appellate Assistant Commissioner under section 28 or section 31 may appeal to the Appellate Tribunal within sixty days of the date on which he is served with notice of such order*

(2) *The Commissioner may, if he objects to any order passed by an Appellate Assistant Commissioner under section 31, direct the Income-tax Officer to appeal to the Appellate Tribunal against such order, and such appeal may be made at any time before the expiry of sixty days from the date of the order.*

as it thinks fit, and shall communicate any such orders to the assessee and to the Commissioner

(5) *Save as provided in section* 66 *orders passed by the Appellate Tribunal on appeal shall be final*

Amendment of section 35

89 *In section* 35 *of the said Act, sub-sections* (2) *and* (3) *shall be re-numbered as sub-sections* (3) *and* (4), *respectively, and the following shall be inserted as sub-section* (2), *namely* —

(2) *The provisions of sub-section* (1) *apply also in like manner to the rectification of mistakes by the Appellate Tribunal*

Amendment of section 37

90 *In section* 37 *of the said Act for the words "and Commissioner" the words ",Commissioner and Appellate Tribunal" and for the words "or Commissioner" in clause* (c) *the words ",Commissioner or Appellate Tribunal" shall be substituted*

Amendment of section 48

91 *In sub-section* (2) *of section* 48 *of the said Act, for the words "The Appellate Assistant Commissioner in the exercise of his appellate powers or the Commissioner in the exercise of his appellate powers or powers of revision" the words "The Appellate Assistant Commissioner or the Appellate Tribunal in the exercise of their appellate powers" shall be substituted*

Statement of case by Appellate Tribunal to High Court

92 *In section* 66 *of the said Act*—

(a) *for sub-sections* (1), (2), (3), (3-*A*), (4) *and* (5), *the following sub-sections shall be substituted, namely* —

(1) *Within sixty days of the date upon which he is served with notice of an order under sub-section* (1) *of section* 33 *the assessee or the Commissioner may, by application in the prescribed form, accompanied where application is made by the assessee by a fee of one hundred rupees, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order, and the Appellate Tribunal shall within ninety days of the receipt of such application draw up a statement of the case and refer it to the High Court*

Provided that, if, in the exercise of its powers under sub-section (2), *the Appellate Tribunal refuses to state a case which it has been required by the assessee to state, the assessee may, within thirty days from the date on which he receives notice of the refusal to state the case, withdraw his application, and, if he does so, the fee paid shall be refunded*

(2) *If on any application being made under sub-section* (1) *the Appellate Tribunal refuses to state the case on the ground that*

no question of law arises, the assessee or the Commissioner, as the case may be, may, within six months from the date on which he is served with notice of the refusal, apply to the High Court, and the High Court may, if it is not satisfied of the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and to refer it, and on receipt of any such requisition the Appellate Tribunal shall state the case and refer it accordingly.

(3) *If on any application being made under sub-section* (1) *the Appellate Tribunal rejects it on the ground that it is time-barred, the assessee or the Commissioner, as the case may be, may, within two months from the date on which he is served with notice of the rejection, apply to the High Court, and the High Court, if it is not satisfied of the correctness of the Appellate Tribunal's decision, may require the Appellate Tribunal to treat the application as made within the time allowed under sub-section* (1)

(4) *If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, the Court may refer the case back to the Appellate Tribunal to make such additions thereto or alterations therein as the Court may direct in that behalf*

(5) *The High Court upon the hearing of any such case shall decide the questions of law raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded and shall send a copy of such judgment under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgment*

(b) *in sub-section* (6) *the words 'on the application of an assessee' shall be omitted*

(c) *in sub-section* (7-A), *for the words brackets, figures and letter "under sub-section* (3) *or sub-section* (3-A)", *the words, brackets and figures "under sub-section* (2) *or sub-section* (3)" *shall be substituted.*

APPENDIX B.

THE INDIAN FINANCE ACT, 1939

The following Act, which has been assented to by the Governor-General under the provisions of clause (*b*) of sub-section (1) of section 67-B of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935, and has been expressed to be made by the Governor-General under the provisions of sub-section (2) of the same section, is hereby published for general information —

An Act to fix the duty on salt manufactured in, or imported by land into, certain parts of British India, to vary the incidence and rate of excise duty on khandsari *sugar leviable under the Sugar (Excise Duty) Act,* 1934, *to vary certain duties leviable under the Indian Tariff Act,* 1934, *to fix maximum rates of postage under the Indian Post Office Act,* 1898, *and to fix rates of income-tax and super-tax*

WHEREAS it is expedient to fix the duty on salt manufactured in, or imported by land into, certain parts of British India, to vary the incidence and rate of excise duty on *khandsari* sugar leviable under the Sugar (Excise Duty) Act, 1934, to vary the duty on raw cotton leviable under the Indian Tariff Act, 1934, to fix maximum rates of postage under the Indian Post Office Act, 1898, and to fix rates of income-tax and super-tax ,

It is hereby enacted as follows —

Short title and extent — 1 (1) This Act may be called THE INDIAN FINANCE ACT, 1939

(2) It extends to the whole of British India

* * * * * * *

Income-tax and super-tax — 6 (1) Subject to the provisions of sub-section (2)—

(*a*) income-tax for the year beginning on the 1st day of April, 1939, shall be charged at the rates specified in Part I of Schedule II, and

(*b*) rates of super-tax for the year beginning on the 1st day of April, 1939, shall, for the purposes of section 55 of the Indian Income-tax Act, 1922, be those specified in Part II of Schedule II

(2) In cases to which section 17 of the Indian Income-tax Act, 1922, applies, the tax chargeable shall be determined in accordance with the provisions of that section with reference to the rates specified in Schedule II

(3) For the purpose of this section and of Schedule II, the expression "total income" means total income as determined for the purposes of income-tax or super-tax as the case may be, in accordance with the provisions of the Indian Income-tax Act, 1922

(4) Notwithstanding anything contained in sub-section (1) or sub-section (2), where more than half of the total income of any individual or Hindu undivided family consists of income from salaries, interest on securities or dividends in respect of which the individual or Hindu undivided family is deemed, under the provisions of section 49-B of the Indian Income-tax Act, 1922, to have paid income-tax imposed in British India, or consists of income falling under more than one of those heads—

(*a*) income-tax for the year beginning on the 1st day of April, 1939, shall be charged in respect of such total incomes at the rates of income-tax which were imposed for the year beginning on the 1st day of April, 1938, in respect of incomes of individuals or Hindu undivided families, and

(*b*) in cases in which super-tax has been deducted under the provisions of section 18 of the said Act or would have been so deductible had the Indian Income-tax (Amendment) Act, 1939, come into force on the 1st day of April, 1938, the rates of super-tax for the year beginning on the 1st day of April, 1939, shall, for the purposes of section 55 of the Indian Income-tax Act, 1922, be the rates of super-tax which were imposed for the year beginning on the 1st day of April, 1938, in respect of incomes of individuals or Hindu undivided families, as the case may be

(5) In respect of income to which sub-section (4) applies, the provisions of section 17 of the Indian Income-tax Act, 1922, shall apply to the assessment to be made for the year beginning on the 1st day of April, 1939, as though the Indian Income-tax (Amendment) Act, 1939, had not been passed

* * * * * * *

SCHEDULE II

[*See* section 6]

PART I

RATES OF INCOME-TAX

A In the case of every individual, Hindu undivided family, unregistered firm and other association of persons not being a case to which paragraph B of this Part applies—

		Rate
1	On the first Rs 1,500 of total income	*Nil*
2	On the next Rs 3,500 of total income	Nine pies in the rupee
3	On the next Rs 5,000 of total income	One anna and three pies in the rupee
4	On the next Rs 5,000 of total income	Two annas in the rupee
5	On the balance of total income	Two annas and six pies in the rupee

Provided that—

(i) no income-tax shall be payable on a total income which does not exceed Rs 2,000,

(ii) the income-tax payable shall in no case exceed half the amount by which the total income exceeds Rs 2,000

B In the case of every company and local authority, and in every case in which, under the provisions of the Indian Income-tax Act, 1922, income-tax is to be charged at the maximum rate—

	Rate
On the whole of total income	Two annas and six pies in the rupee.

PART II

RATES OF SUPER-TAX

A In the case of every individual, Hindu undivided family, unregistered firm and other association of persons, not being a case to which paragraph B of this part applies—

		Rate
1	On the first Rs 25,000 of total income	*Nil*
2	On the next Rs 10 000 of total income	One anna in the rupee
3	On the next Rs 20,000 of total income	Two annas in the rupee
4	On the next Rs 70,000 of total income	Three annas in the rupee
5	On the next Rs 75,000 of total income	Four annas in the rupee
6	On the next Rs 1,50,000 of total income	Five annas in the rupee
7	On the next Rs 1,50,000 of total income	Six annas in the rupee
8	On the balance of total income	Seven annas in the rupee

B In the case of every company and local authority—

	Rate
On the whole of total income	One anna in the rupee

APPENDIX C

THE INDIAN FINANCE ACT, 1938

(Certified by Governor General on 26th March, 1938)

An Act to fix the duty on salt manufactured in, or imported by land into, certain parts of British India, to fix maximum rates of postage under the Indian Post Office Act, 1898, and to fix rates of income tax and super tax

WHEREAS it is expedient to fix the duty on salt manufactured in, or imported by land into, certain parts of British India, to fix maximum rates of postage under the Indian Post Office Act VI of 1898, and to fix rates of income tax and super tax,

It is hereby enacted as follows —

1 (1) This Act may be called THE INDIAN FINANCE ACT, 1938

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas

* * * * * *

4 (1) Income tax for the year beginning on the 1st day of April, 1938, shall be charged at rates applicable to the total income of each assessee the same, and increased in each case by the same fraction of the amount of the rate, as for the year beginning on the 1st day of April 1937

(2) The rates of super tax for the year beginning on the 1st day of April, 1938, shall, for the purposes of section 55 of the Indian Income tax Act, XI of 1922, be the same rates, increased in each case by the same fraction of the amount of the rate, as for the year beginning on the 1st day of April, 1937

(3) For the purposes of sub section (1) "total income" means total income as determined in accordance with the provisions of the Indian Income-tax Act, XI of 1922

RATES OF INCOME-TAX.

(Increased in each case by one-twelfth of the amount of the rate)

A In the case of every individual, Hindu undivided family, unregistered firm and other association of individuals not being a registered firm or a company—

(1)	When the total income is Rs 2,000 or upwards, but is less than Rs 5,000	Six pies in the rupee
(2)	When the total income is Rs 5,000 or upwards, but is less than Rs 10,000	Nine pies in the rupee
(3)	When the total income is Rs 10,000 or upwards, but is less than Rs 15,000	One anna in the rupee
(4)	When the total income is Rs 15,000 or upwards, but is less than Rs 20,000	One anna and four pies in the rupee
(5)	When the total income is Rs 20,000 or upwards, but is less than Rs 30,000	One anna and seven pies in the rupee
(6)	When the total income is Rs 30,000 or upwards, but is less than Rs 40,000	One anna and eleven pies in the rupee
(7)	When the total income is Rs 40,000 or upwards, but is less than Rs 1,00,000	Two annas and one pie in the rupee
(8)	When the total income is Rs 1,00,000 or upwards	Two annas and two pies in the rupee

B In the case of every company and registered firm, whatever its total income . Two annas and two pies in the rupee

RATES OF SUPER TAX.

(Increased in each case by one twelfth of the amount of the rate)

In respect of the excess over thirty thousand rupees of total income—	
(1) in the case of every company—	
(a) in respect of the first twenty thousand rupees of such excess	*Nil*
(b) for every rupee of the remainder of such excess	One anna in the rupee
(2) (a) in the case of every Hindu undivided family—	
(i) in respect of the first forty five thousand rupees of such excess	*Nil*
(ii) for every rupee of the next twenty-five thousand rupees of such excess	One anna and three pies in the rupee
(b) in the case of every individual, unregistered firm and other association of individuals not being a registered firm or a company—	
(i) for every rupee of the first twenty thousand rupees of such excess	Nine pies in the rupee
(ii) for every rupee of the next fifty thousand rupees of such excess	One anna and three pies in the rupee
(c) in the case of every individual, Hindu undivided family, unregistered firm and other association of individuals not being a registered firm or a company—	
(i) for every rupee of the next fifty thousand rupees of such excess	One anna and nine pies in the rupee
(ii) for every rupee of the next fifty thousand rupees of such excess	Two annas and three pies in the rupee
(iii) for every rupee of the next fifty thousand rupees of such excess	Two annas and nine pies in the rupee
(iv) for every rupee of the next fifty thousand rupees of such excess	Three annas and three pies in the rupee
(v) for every rupee of the next fifty thousand rupees of such excess	Three annas and nine pies in the rupee
(vi) for every rupee of the next fifty thousand rupees of such excess	Four annas and three pies in the rupee
(vii) for every rupee of the next fifty thousand rupees of such excess	Four annas and nine pies in the rupee
(viii) for every rupee of the next fifty thousand rupees of such excess	Five annas and three pies in the rupee
(ix) for every rupee of the next fifty thousand rupees of such excess	Five annas and nine pies in the rupee
(x) for every rupee of the remainder of such excess	Six annas and three pies in the rupee

APPENDIX D.

THE GOVERNMENT TRADING TAXATION ACT (III OF 1926)

[1st April, 1926]

An Act to determine the liability of certain Governments to taxation in British India in respect of trading operations

WHEREAS it is expedient to determine the liability to taxation for the time being in force in British India of the Government of any part of His Majesty's Dominions, exclusive of British India, in respect of any trade or business carried on by or on behalf of such Government, It is hereby enacted as follows —

Short title and commencement

1 (1) This Act may be called THE GOVERNMENT TRADING TAXATION ACT, 1926

(2) It shall come into force on such date as the Governor-General in Council may, by notification in the Gazette of India, appoint.

Liability of certain Governments to taxation in respect of trading operations

2 (1) Where a trade or business of any kind is carried on by or on behalf of the Government of any part of His Majesty's Dominions, exclusive of British India, that Government shall, in respect of the trade or business and of all operations connected therewith, all property occupied in British India and all goods owned in British India for the purposes thereof, and all income arising in connection therewith, be liable—

(a) to taxation under the Indian Income tax Act, 1922, in the same manner and to the same extent as in the like case a company would be liable,

(b) to all other taxation for the time being in force in British India in the same manner as in the like case any other person would be liable

(2) For the purposes of the levy and collection of income-tax under the Indian Income-tax Act, 1922, in accordance with the provisions of sub section (1), any Government to which that sub-section applies shall be deemed to be a company within the meaning of that Act, and the provisions of that Act shall apply accordingly

(3) In this section the expression "His Majesty's Dominions" includes any territory which is under His Majesty's protection or in respect of which a mandate is being exercised by the Government of any part of His Majesty's Dominions

APPENDIX E

THE INDIA AND BURMA (INCOME-TAX RELIEF) ORDER, 1936

AT THE COURT AT BALMORAL.

The 26th day of September, 1936

PRESENT —THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by section one hundred and fifty nine of the Government of India Act, 1935 (hereafter in this Order referred to as "the India Act") and section one hundred and thirty-six of the Government of Burma Act, 1935 (hereafter in this Order referred to as "the Burma Act") His Majesty is empowered by Order in Council to make provision for the grant of relief from tax where the same income is taxed or taxable both in India and Burma

AND WHEREAS a draft of this Order has been laid before Parliament in accordance with the provisions of sub section (1) of section three hundred and nine of the India Act and sub section (1) of section one hundred and fifty seven of the Burma Act, and an Address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order

NOW, THEREFORE, His Majesty, in the exercise of the said powers and of all other powers enabling Him in that behalf, is pleased by and with the advice of His Privy Council to order, and it is hereby ordered, as follows —

PART I

INTRODUCTORY AND GENERAL.

1 This Order may be cited as "THE INDIA AND BURMA (INCOME TAX RELIEF) ORDER", 1936

2 The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament

3 Any reference in this Order to, or to any provisions of, the Indian Income-tax Act, 1922 shall be construed as a reference to that Act or those provisions as for the time being in force in India, as for the time being in force in Burma or as for the time being in force both in India and in Burma as the context and the circumstances may require, or, if that Act or those provisions have been repealed and re enacted, either with or without modifications, to the re enacting Act or provisions as in force as aforesaid

4 In this Order, "income-tax," or "tax" in relation to India or Burma, means income tax payable in accordance with the Indian Income-tax Act, 1922 and includes super tax so payable and other expressions have, except where the context otherwise requires, the same meanings as in the Indian Income-tax Act, 1922

5 References in this Order to the rate of tax shall—

(a) in relation to India or Burma be construed as references to a rate determined by dividing the amount of income-tax paid in India or Burma [illegible] for the year in question (before deduction of any relief granted under [illegible] of the Indian Income-tax Act 1922 or under this Order) by the amount of the [illegible] on which tax was charged,

(b) in relation to the United Kingdom mean the appropriate [illegible] United Kingdom income tax for the year in question [illegible] twenty seven of the Finance Act, [illegible]

6 Any reference in this Order to the [illegible] to the two lowest of the [illegible] reference [illegible] be construed as a reference to the [illegible]

7 This Order shall have effect [illegible] the commencement of Part III of the [illegible]

Provided [illegible]

with respect to any financial year subsequent to the financial year next following that during which the notice is given

PART II

RELIEF IN INDIA

1 If any person who has paid Indian Income tax for any year on any part of his income proves to the satisfaction of the Income tax Officer that he has paid for that year Burman income tax, or Burman income tax and United Kingdom income tax, in respect of that part of his income, he shall be entitled to a refund of Indian tax calculated on that part of his income at the appropriate rate of relief

In this paragraph "appropriate rate of relief" means—

(a) in relation to income taxed in India and Burma and not in the United Kingdom, a rate bearing to the Indian rate of tax or the Burman rate of tax, whichever is the lower, the same proportion as the Indian rate of tax, bears to the sum of the Indian rate of tax and the Burman rate of tax,

(b) in relation to income taxed in India, Burma and the United Kingdom, a rate bearing to the difference between the total rate at which he was entitled to, and obtained relief in the United Kingdom under section twenty seven of the Finance Act, 1920, in respect of that income, and the sum of the two lowest of the three rates of tax the same proportion as the Indian rate of tax bears to the sum of the Indian rate of tax and the Burman rate of tax

2 No refund of tax shall be payable in India under section forty nine of the Indian Income tax Act, 1922, in respect of any income which is taxed under that Act in Burma, and if any such refund is made it shall be repaid

3 Any sums repayable under the last foregoing paragraph and any sums overpaid by way of refund under this Part of this Order shall be recoverable as if they were arrears of income tax

4 No income which an assessee proves to the satisfaction of the Income tax Officer to have been charged in his hands to income tax under the Indian Income-tax Act, 1922, for any year preceding the commencement of Part III of the India Act shall be included in India in the assessment of his income for any subsequent year

5 In the provisions of the Indian Income-tax Act, 1922 (other than the provisions of section forty nine thereof)—

(a) any reference to that Act or to section forty nine thereof shall be construed as including a reference to this Part of this Order,

(b) any reference to section twenty seven of the Finance Act, 1920, shall be construed as including a reference to Part III of this Order,

(c) any reference to the United Kingdom in relation to relief under the said section twenty-seven, or in relation to refunds under the said section forty-nine, shall be construed as including a reference to Burma in relation to refunds under Part III of this Order or this part of this Order, as the case may require

PART III

RELIEF IN BURMA

1 If any person who has paid Burman income tax for any year on any part of his income proves to the satisfaction of the Income tax Officer that he has paid for that year Indian income tax, or Indian income tax and United Kingdom income-tax, in respect of that part of his income, he shall be entitled to a refund of Burman tax calculated on that part of his income at the appropriate rate of relief

In this paragraph "appropriate rate of relief," means—

(a) in relation to income taxed in Burma and India and not in the United Kingdom, a rate bearing to the Burman rate of tax or the Indian rate of tax, whichever is the lower, the same proportion as the Burman rate of tax bears to the sum of the Burman rate of tax and the Indian rate of tax,

(b) in relation to income taxed in Burma, India and the United Kingdom, a rate bearing to the difference between the total rate at which he was entitled to, and obtained, relief in the United Kingdom under section twenty seven of the Finance Act, 1920, in respect of that income, and the sum of the two lowest of the three rates of tax the same proportion as the Burman rate of tax bears to the sum of the Burman rate of tax and the Indian rate of tax

2 No refund of tax shall be payable in Burma under section forty nine of the Indian Income-tax Act, 1922, in respect of any income which is taxed under that Act in India, and if any such refund is made it shall be repaid

3 Any sums repayable under the last foregoing paragraph and any sums overpaid by way of refund under this Part of this Order shall be recoverable as if they were arrears of income tax.

4 No income which an assessee proves to the satisfaction of the Income-tax Officer to have been charged in his hands to income tax under the Indian Income-tax Act, 1922, for any year preceding the commencement of the Burma Act, shall be included in Burma in the assessment of his income for any subsequent year

5 In the provisions of the Indian Income-tax Act 1922 (other than the provisions of section forty-nine thereof)—

(a) any reference to that Act or to section forty-nine thereof shall be construed as including a reference to this Part of this Order,

(b) any reference to section twenty-seven of the Finance Act, 1920, shall be construed as including a reference to Part II of this Order,

(c) any reference to the United Kingdom, in relation to relief under the said section twenty-seven or in relation to a refund under the said section forty-nine, shall be construed as including a reference to India in relation to refunds under Part II of this Order or this Part of this Order, as the case may require

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with respect to any financial year subsequent to the financial year next following that during which the notice is given

PART II

RELIEF IN INDIA

1 If any person who has paid Indian Income-tax for any year on any part of his income proves to the satisfaction of the Income tax Officer that he has paid for that year Burman income tax, or Burman income tax and United Kingdom income tax, in respect of that part of his income, he shall be entitled to a refund of Indian tax calculated on that part of his income at the appropriate rate of relief

In this paragraph "appropriate rate of relief" means—

(a) in relation to income taxed in India and Burma and not in the United Kingdom, a rate bearing to the Indian rate of tax or the Burman rate of tax, whichever is the lower, the same proportion as the Indian rate of tax, bears to the sum of the Indian rate of tax and the Burman rate of tax,

(b) in relation to income taxed in India, Burma and the United Kingdom, a rate bearing to the difference between the total rate at which he was entitled to, and obtained, relief in the United Kingdom under section twenty seven of the Finance Act, 1920, in respect of that income, and the sum of the two lowest of the three rates of tax the same proportion as the Indian rate of tax bears to the sum of the Indian rate of tax and the Burman rate of tax

2 No refund of tax shall be payable in India under section forty nine of the Indian Income-tax Act, 1922, in respect of any income which is taxed under that Act in Burma, and if any such refund is made it shall be repaid.

3 Any sums repayable under the last foregoing paragraph and any sums overpaid by way of refund under this Part of this Order shall be recoverable as if they were arrears of income-tax

4 No income which an assessee proves to the satisfaction of the Income tax Officer to have been charged in his hands to income tax under the Indian Income-tax Act, 1922, for any year preceding the commencement of Part III of the India Act shall be included in India in the assessment of his income for any subsequent year

5 In the provisions of the Indian Income-tax Act, 1922 (other than the provisions of section forty nine thereof)—

(a) any reference to that Act or to section forty-nine thereof shall be construed as including a reference to this Part of this Order,

(b) any reference to section twenty-seven of the Finance Act, 1920, shall be construed as including a reference to Part III of this Order,

(c) any reference to the United Kingdom in relation to relief under the said section twenty-seven, or in relation to refunds under the said section forty-nine, shall be construed as including a reference to Burma in relation to refunds under Part III of this Order or this part of this Order, as the case may require

PART III

RELIEF IN BURMA

1 If any person who has paid Burman income tax for any year on any part of his income proves to the satisfaction of the Income tax Officer that he has paid for that year Indian income-tax, or Indian income-tax and United Kingdom income-tax, in respect of that part of his income, he shall be entitled to a refund of Burman tax calculated on that part of his income at the appropriate rate of relief

In this paragraph "appropriate rate of relief," means—

(a) in relation to income taxed in Burma and India and not in the United Kingdom, a rate bearing to the Burman rate of tax or the Indian rate of tax, whichever is the lower, the same proportion as the Burman rate of tax bears to the sum of the Burman rate of tax and the Indian rate of tax,

(b) in relation to income taxed in Burma, India and the United Kingdom, a rate bearing to the difference between the total rate at which he was entitled to, and obtained, relief in the United Kingdom under section twenty seven of the Finance Act, 1920, in respect of that income, and the sum of the two lowest of the three rates of tax the same proportion as the Burman rate of tax bears to the sum of the Burman rate of tax and the Indian rate of tax

2 No refund of tax shall be payable in Burma under section forty nine of the Indian Income-tax Act, 1922, in respect of any income which is taxed under that Act in India, and if any such refund is made it shall be repaid

3 Any sums repayable under the last foregoing paragraph and any sums overpaid by way of refund under this Part of this Order shall be recoverable as if they were arrears of income tax.

4 No income which an assessee proves to the satisfaction of the Income tax Officer to have been charged in his hands to income tax under the Indian Income tax Act, 1922, for any year preceding the commencement of the Burma Act, shall be included in Burma in the assessment of his income for any subsequent year

5 In the provisions of the Indian Income tax Act, 1922 (other than the provisions of section forty nine thereof)—

(*a*) any reference to that Act or to section forty-nine thereof shall be construed as including a reference to this Part of this Order,

(*b*) any reference to section twenty seven of the Finance Act, 1920, shall be construed as including a reference to Part II of this Order,

(*c*) any reference to the United Kingdom, in relation to relief under the said section twenty seven or in relation to a refund under the said section forty nine, shall be construed as including a reference to India in relation to refunds under Part II of this Order or this Part of this Order, as the case may require

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APPENDIX F

THE INDIA, BURMA AND ADEN (TRANSITORY PROVISIONS) (TAXATION) ORDER, 1937

AT THE COURT AT BUCKINGHAM PALACE.

The 18th day of March, 1937

PRESENT —THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by section three hundred and ten of the Government of India Act, 1935 (hereafter in this Order referred to as "the India Act"), and by section one hundred and fifty-six of the Government of Burma Act, 1935 (hereafter in this Order referred to as "the Burma Act") His Majesty in Council is empowered, for the purpose of facilitating the transition from the provisions of the Government of India Act, to make temporary provision for the purpose of removing any difficulties arising in relation to the said transition

AND WHEREAS a draft of this Order has been laid before Parliament in accordance with the provisions of sub-section (1) of section three hundred and nine of the India Act and sub section (1) of section one hundred and fifty seven of the Burma Act, and an Address has been presented to His Majesty by both Houses of Parliament praying that an order may be made in the terms of this Order,

NOW, THEREFORE, His Majesty, in the exercise of the said powers and of all other powers enabling him in that behalf, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows —

1 This Order may be cited as THE INDIA, BURMA AND ADEN (TRANSITORY PROVISIONS) (TAXATION) ORDER, 1937

2 The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament

3 In this Order—

"separation" means the separation of Burma and Aden from India,

"the three countries" means India, Burma and Aden,

"Central taxation" means all taxes, duties, charges, fines and penalties payable or about to become payable under, or in accordance with the provisions of, the Acts specified in the Schedule to this Order

"outstanding Central taxation" means Central taxation which had become payable before separation, or which could have become payable before separation if the existence and extent of the liability had been determined in time

4 (1) Separation shall not affect—

(*a*) the amount payable by any person in respect of outstanding Central taxation,

(*b*) the amounts to be allowed, by way of drawback, refund, rebate, or credit in assessment, to any person in respect of Central taxation paid, or treated as paid, before separation, or in respect of deposits made before separation as security for payment of Central taxation, or in respect of outstanding Central taxation paid after separation

(2) The said amounts shall remain or become payable, or, as the case may be, be allowed, in the same places as if separation had not taken place, and the enactments relating to the assessment, demand and recovery of Central taxation shall, throughout the three countries, continue to apply, as nearly as may be, in relation to those amounts as if there had been no separation

Provided that any amount paid or allowed after separation shall be paid or allowed for the benefit or at the expense of the Government of that one of those countries in which the place in which the amount first became payable or was allowed is situated, and where any amount which became payable in one of the three countries is recovered in another, any necessary adjustments shall be made between the revenues of those countries accordingly

5 After separation the same consequences shall flow in each of the three countries from the stamping outside that country of any document executed before separation, as would have flowed therefrom if there had been no separation

SCHEDULE

The Indian Income-tax Act, 1922
The Sea Customs Act, 1878
The Land Customs Act, 1924
The Motor Spirit (Duties) Act, 1917
The Indian Finance Act, 1922
The Silver (Excise Duty) Act, 1930
The Sugar (Excise Duty) Act, 1934
The Matches (Excise Duty) Act, 1934
The Mechanical Lighters (Excise Duty) Act, 1934
The Iron and Steel (Duties) Act, 1934

APPENDIX G.

NOTIFICATIONS

INCOME-TAX

The 18th March, 1939

WITHDRAWING CERTAIN EXEMPTIONS

No 5—In exercise of the powers conferred by sub-section (1) of section 60 of the Indian Income-tax Act, 1922 (XI of 1922), the Central Government is pleased to direct that the exemptions granted by clauses (14), (15), (15-A) and (15-B) of paragraph (*a*) of the notification of the Government of India in the Finance Department, No 878-F, dated the 21st March 1922, shall cease to have effect in respect of allowances and salaries paid or drawn after the 31st March, 1939

No 6—In exercise of the powers conferred by sub-section (1) of section 60 of the Indian Income-tax Act, 1922 (XI of 1922), the Central Government is pleased to direct that the exemption conferred by clause (1) of paragraph (*b*) of the notification of the Government of India in the Finance Department, No 878-F, dated the 21st March 1922, shall cease to have effect in respect of interest paid after the 31st March 1939

COMMENCEMENT OF INCOME-TAX (AMENDMENT) ACT, VII OF 1939.

No 7—In pursuance of sub-section (2) of section 1 of the Indian Income-tax (Amendment) Act, 1939 (VII of 1939), the Central Government is pleased to appoint the 1st day of April 1939 as the date on which the said section and Part I, with the exception of sub-clauses (*iii*) and (*iv*) of clause (*b*) of section 11, of the said Act, shall come into force

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